

Department of Land and Natural Resources

Division of Boating and Recreation

Amendments

Amendments to Parts I, II and III

Hawaii Administrative Rules

1. Section 13-230-8 Hawaii Administrative Rules, is amended to read as follows:

§13-230-8 Definitions.

"Dormant vessel" means a vessel or contrivance, other than a houseboat, that has been determined by the department not to [exhibit any activity on board] have exited the assigned small boat harbor facility [or movement from its assigned berth] or assigned offshore mooring at least once within a ninety-day period, or cannot be made ready for sea upon thirty days notice to the owner.

"Temporary mooring" means mooring pursuant to a temporary ~~mooring~~-use permit or mooring without a use permit. Calculation of the cumulative period for temporary mooring shall include both types of mooring.

"Stay aboard" or "staying aboard" means a person or persons aboard any vessel [for a period of two hours or more] between the hours of [12:00 midnight] 10:00 P.M. and 6:00 A.M., while the vessel is moored in a state small boat harbor or offshore mooring area.

"Corporation" includes any and all entities that is not an individual person, including but not limited to, Corporation(s), Limited Liability Corporation(s), Limited Liability Partnership(s), Company(s), Incorporated business(s), Trust(s), etc...

[Eff 2/24/94; am 4/27/02] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

2. Section 13-230-21 Hawaii Administrative Rules, is amended to read as follows:

§13-230-21 Definitions. For the purpose of this subchapter:

“Significant other” means a personal partner of the principle habitation permittee who is not a relative by biology or adoption to the principle habitation permittee. While living together on the vessel, the principle habitation permittee and the significant other shall not have a landlord-tenant relationship.

[Eff 2/24/94] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

3. Section 13-230-27 Hawaii Administrative Rules, is amended to read as follows:

Section 13-230-27 Permittee required to report change of residence.

- (a) A resident permittee who subsequently takes up residence outside of the state and continues to moor the permittee’s vessel in a state small boat harbor shall advise the department in writing within seven days of the permittee’s change of residence. In such a case, nonresident fees and charges shall be payable commencing at the first residence determination date following the change of residence.
- (b) A permittee who takes up residence outside of the state or a different island and continues to moor the permittee’s vessel at a small boat harbor shall have a caretaker that resides on the same island as the permittee’s vessel is moored. The permittee shall provide the name, phone number, and address of the caretaker. The caretaker in the absence of the permittee shall be able to operate the permittee’s vessel and respond to emergencies concerning the permittee’s vessel i.e., sinking, fire, adverse weather conditions etc. [Eff 2/24/1994] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

4. Section 13-231-4, Hawaii Administrative Rules, is amended by amending subsection (b) to read as follows:

§13-231-4 Use permits; part-time or intermittent occupancy.

[(b) No use permit shall be issued authorizing temporary mooring of same vessel within the same small boat harbor or offshore mooring area for a cumulative period of more than ninety days in the same calendar year, provided that for Ala Wai small boat harbor the cumulative period shall not exceed one hundred and twenty days if space is available at the designated transient mooring area] and the temporary mooring permit is issued in accordance with section 13-231-85.] (b) Temporary mooring of a vessel within the same small boat harbor or offshore mooring area shall not exceed a cumulative period of more than one hundred and twenty days in the same calendar year per vessel, except as provided in section 13-256-73.11 for Heeia Kea small boat harbor. Temporary mooring permits shall be issued in accordance with section 13-231-85. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-6) (Imp: HRS §§200-2, 200-3, 200-6) [Eff

5. Section 13-231-6 Hawaii Administrative Rules, is amended to read as follows:

§13-231-6. Revocation of use permit.

(a) If after notice and lapse of reasonable period of time, the permittee fails to remedy any breach of the duties, covenants or conditions of the permit or to desist from violating or permitting violation of these rules, the department may revoke the permittee's use permit.

(b) In addition to subsection (a), the department may revoke a use permit for a deliberate misstatement or willful failure to disclose any material fact in an application for a vessel number, documentation, registration of a vessel, or any of the use permits specified in section 13-231-3.

(c) Delinquency in excess of thirty days in the payment of any fees owed to the department shall result in automatic suspension of [the] any commercial use permit, and delinquency in excess of sixty days shall result in automatic expiration of the commercial use permit. All notification shall be sent by certified mail, return receipt requested to the last known address of the permittee. (Auth: HRS §200-10) (Imp: HRS §200-10)

6. Section 13-231-13 Hawaii Administrative Rules, is amended to read as follows:

§13-231-13 Joint and several liability; non-transferability of use permit.

(a) All persons whose signatures have been affixed to any agreement with respect to a vessel shall be jointly and severally liable for the full performance of such agreement. No use permit shall be transferable, so that whenever a permittee parts with possession or transfers the title to or interest in the vessel or corporation identified in the permit to another person by any arrangement, the use permit shall expire except as provided herein with respect to the original permittee[.] , also provided that in the event of a vessel owned by a corporation, any change, addition or replacement of the officers and/or owners shall cause a regular mooring permit to expire if the permit is held without a commercial use permit. The new possessor, transferee, or owner shall have no right to use the space covered by the use permit.

(b) Upon written application to and approval by the department:

- (1) The original permittee may retain the mooring space under the permittee's permit; provided that within seven (7) days the permittee shall notify the department of the transfer and within thirty days the permittee moves into the space another vessel owned by the permittee of appropriate characteristics for occupancy of the berth and pays the appropriate fees therefor;
- (2) A principal owner may retain a berth if that owner acquires the interest of one or more co-owners because a co-owner has died or moved out of the State;
- (3) An owner may retain the berth if an interest in a vessel is transferred to the owner's spouse or other immediate family member;
- (4) The spouse of a permittee may retain all small boat harbor use permits held by the permittee upon the death of the permittee, provided that the permittee's will or a court decree states that the spouse shall be awarded ownership of the vessel identified in the mooring permit; or
- (5) The department may extend the deadline for the permittee to place a new vessel in the assigned berth if conclusive evidence is presented to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time necessary to place a new vessel in the berth shall not exceed one hundred twenty days from the date of sale or transfer of the previously assigned vessel.

(c) Notwithstanding the requirements of subsection (a), the department may permit a one-time change in ownership of the permittee's vessel from personal ownership to corporate or other business ownership, provided that the permittee holds a valid commercial permit or is engaged in commercial fishing as a primary means of livelihood and notifies the department in writing of an intended change in ownership. The transfer of all small boat harbor use permits from the individual to the new corporation or other business entity shall be completed within one year of the date of receipt of the notification of intended change of ownership. The following requirements and conditions shall apply to the foregoing change in ownership:

- (1) The ownership of any corporation or other business entity formed under the provisions of this subsection shall be limited to the permittee, any co-owners of the vessel and the members of the immediate families of the permittee and co-owners;
- (2) The permittee shall apply for the reissuance of the commercial permit, mooring permit and any other small boat harbor use permits in the name of the corporation or other business entity in accordance with the application procedures established by this chapter. Each application shall be accompanied by a copy of the charter of incorporation or other evidence acceptable to the department that the new corporation or other business entity is properly registered with the department of commerce and consumer affairs and is licensed to do business in the State; and
- (3) Each application for change of ownership shall be reviewed by the department in accordance with the provisions of section 13-231-82. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: §§200-2, 200-9, 200-10)

7. Section 13-231-22 Hawaii Administrative Rules, is amended to read as follows:

§13-231-22 Staying aboard transient or visiting vessels.

A stay aboard permit authorizing persons to stay aboard a transient or visiting vessel moored in a small boat harbor or offshore mooring area may be issued to the owner, master, crew, and passengers for a period or periods not to exceed [ninety nights in a calendar year, except that for Ala Wai small boat harbor the period shall not exceed] one hundred twenty nights in a calendar year.

[Eff 2/24/94] (Auth: HRS §§200-2, 200-9) (Imp: HRS §§200-2, 200-9, 200-10)

8. Section 13-231-26 Hawaii Administrative Rules, is amended to read as follows:

§13-231-26 Use of a vessel as a place of principal habitation.

(a) A vessel owner who holds a valid regular mooring permit issued by the department authorizing the owner to moor the owner's vessel in Ala Wai or Keehi [boat] Small Boat Harbors may use that vessel as a place of principal habitation if the owner has applied for and secured:

- (1) A principal habitation permit [;] [and] issued by the department in accordance with these rules, provided that the owner and the vessel meet the requirements set forth in these rules.
- [(2) A harbor resident permit issued by the department in accordance with these rules, provided that the owner and the vessel meet the requirements set forth in these rules.]

(b) A permit authorizing the use of a vessel as a place of principal habitation shall not be issued if the vessel is owned by a corporation.

(c) No person shall be issued a permit authorizing the use of any vessel as a place of principal habitation while the vessel is moored at the following locations in Ala Wai boat Small Boat Harbor:

- (1) Berths 23 through 79;
- (2) The area leased to the Waikiki Yacht Club;
- (3) The area leased as a marine fueling facility;
- (4) The area leased to [Ala Wai Marine, Ltd] a haul-out facility; and
- [(5) The moorings adjacent to the breakwater.]

(d) A vessel owner may utilize the owner's vessel as a place of principal habitation while moored in the area leased to the Hawaii Yacht Club if the owner has applied for and holds a valid principal habitation permit [and harbor resident permit] issued by the department in accordance with these rules.

(e) Only the vessel owner, co-owner, the spouse of each, and their legal dependents may be issued a [harbor resident permit] principle habitation permit.

(f) The owners of no more than one hundred twenty-nine vessels moored at Ala Wai Small Boat Harbor shall be issued permits to use their vessels as a place of principal habitation. The owners of no more than thirty-five vessels moored at Keehi Small Boat Harbor [shall] may be issued such permits. Any vessel used as a place of principal habitation that is temporarily absent from its mooring[s] shall continue to be considered as one of the vessels being used as a place of principal habitation if the owner retains a principal habitation permit as provided in section 13-231-11. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

[Eff]

9. Section 13-231-27 Hawaii Administrative Rules, is amended to read as follows:

§13-231-27 Allocation of principal habitation permits.

(a) Application for a principal habitation permit; period of validity; renewal of application.

- (1) The first owner to file an application may be offered a principal habitation permit as described under subsection (e) if the maximum number of vessels authorized by subsection 13-231-26(f) are not being used as the principal habitation of the owners; provided that no prior requests therefore are pending as provided in this section.
- (2) If the maximum number of vessels permitted by subsection 13-231-26(f) is being used as the principal habitation of the owners, an owner's application for a principal

habitation permit shall be retained and honored when the total number of vessels so used is less than the maximum limit so that the issuance of such a permit is authorized pursuant to these rules.

- (A) An application for the issuance of a principal habitation permit shall be made in writing to the department by the owner on a form provided by the department. The department shall accept the application for consideration by endorsing it and entering the filing time and date on the application form submitted; one copy shall be given to the applicant. The time and date the application is endorsed by the department shall be the filing date and the effective date of the application for consideration and shall establish such applicant's seniority or priority over later applicants if the application remains valid. No application shall be accepted unless and until the application fee prescribed in these rules is paid by the applicant and review thereof has been conducted pursuant to subsection (b).
 - (B) An application shall continue in full force and effect for a period ending one year from the effective date of the application, except as provided in subsection (c) unless terminated sooner in accordance with these rules. An application is void after the date of expiration indicated thereon.
 - (C) An application may be renewed within a ninety-day period preceding its expiration date. An application properly renewed prior to its expiration date shall be valid for a period ending one year from expiration date of the previous application. No application for renewal shall be accepted until the fee prescribed in these rules is paid by the applicant.
 - (D) It is the policy of the department to mail an application renewal notice to an applicant, prior to the expiration of the application, at the address the applicant has furnished to the department pursuant to subsection (c). However, the applicant is nonetheless responsible for the timely renewal of an application without receipt of a renewal notice from the department.
- (b) Review, and acceptance, or rejection of applications.
- (1) The department shall examine and determine the genuineness and regularity of each application and may conduct any investigation as may be deemed necessary for its examination and determination; and it may require additional information from the applicant as may be necessary to determine the genuineness and regularity of the application.
 - (2) The department shall reject any application that contains a material misstatement or if the applicant has failed to disclose any material fact in the application.
 - (3) An application shall not be accepted for consideration and shall be rejected if:
 - (A) The application fee is not paid at the time the application is made;
 - (B) The applicant is delinquent in the payment of any moneys due and payable to the department; or

- (C) The applicant has pending a citation for violation of any of the department's rules.
- (4) Upon rejection of an application, the department shall inform the applicant, in writing within a reasonable time, that the application has not been accepted for consideration and has been rejected and the reasons therefore. An applicant may cure the defect and reapply.
- (c) Applicant required to furnish address and report changes; effect of failure to report changes.
 - (1) An applicant shall include the applicant's address in the application to the department for a principal habitation permit.
 - (2) An applicant shall immediately notify the department in writing of any changes in the applicant's address in order to maintain the validity of his application.
 - (3) An application shall be void if the department is unable to reach the applicant to offer the applicant a principal habitation permit at the address:
 - (A) Appearing on the application; or
 - (B) Furnished in writing to the department by the applicant as a change of address subsequent to submitting the application.
- (d) Withdrawal of application; effect if application has become void, expires, or has been withdrawn.
 - (1) An application may be withdrawn by an applicant upon written notice to the department.
 - (2) An applicant who withdraws an application or whose application has expired, or become void, may submit a new application for acceptance by the department. Seniority begins on the date the applicant's new application is accepted for consideration as provided in subsection (a) (2) (A).
- (e) Priority in the allocation of principal habitation permits. When the total number of vessels authorized by the department to be used as the principal habitation of the owners at Ala Wai or Keehi Small Boat Harbors is less than the maximum number of vessels authorized to be so used pursuant to the provisions of section 13-231-26(f), the department [shall] may offer a principal habitation permit to the senior applicant eligible to receive such a permit.
- (f) Notice to owner of available principal habitation permit. When an offer of a principal habitation permit is provided for in this section, the department shall deliver the offer or send it by certified mail - return receipt requested, addressed to the applicant eligible to receive the offer pursuant to this section at the post office address furnished to the department in writing by the applicant.
- (g) Offer of principal habitation permit valid only fourteen days; written notice of intention; acceptance.
 - (1) An applicant may decline an offer of a principal habitation permit and retain the applicant's seniority if the applicant declines the offer in writing addressed to and received by the

department, not later than fourteen days after the date of receipt of the offer. An applicant who declines an offer in writing and retains the applicant's seniority pursuant to this subsection shall not be considered for another offer on the basis of the applicant's seniority until six months have elapsed since the date of the applicant's last refusal.

- (2) (A) If an applicant decides to accept the offer of a principal habitation permit, the applicant shall either:
 - (i) Deliver a written notice of intention to accept the offer to the department within fourteen days after the date of receipt of the offer; or
 - (ii) Accept the offer by securing a principal habitation permit, within fourteen days after the receipt of the offer.
- (B) The applicant's application for a principal habitation permit and the offer by the State of a principal habitation permit shall be void if the applicant fails to either secure a principal habitation permit or give notice of intent to accept or to decline the offer in writing within fourteen days after the date of receipt of the offer, and the permit shall then be offered to the next senior applicant pursuant to this section.
- (3) (A) An applicant who has not accepted the offer but has delivered a written notice of intention to accept to the department pursuant to paragraph (2) shall accept the offer by securing a principal habitation permit as prescribed in sections 13-231-2 and 13-231-3 within fourteen days after the applicant mails or personally delivers the notice of intention to accept to the department.
- (B) Except as provided in paragraph (4) the applicant's application for a principal habitation permit, the offer by the State of a principal habitation permit and the applicant's notice of intention to accept the offer shall be void if the applicant fails to secure a principal habitation permit within the fourteen days as prescribed herein, and the principal habitation permit shall then be offered to the next senior applicant in accordance with these rules.
- (4) The department may extend the deadline for acceptance prescribed in paragraph (2) if the applicant presents evidence to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time for compliance shall not exceed a period of sixty days from the date the department received from the applicant a written notice of intention to accept the offer of a principal habitation permit.
- (5) Since time is of the essence, the offer delivered or mailed to an applicant pursuant to subsection (f) shall contain a statement that the offer will lapse unless accepted in accordance with the procedures of this section. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

10. Section 13-231-28 Hawaii Administrative Rules, is amended to read as follows:

§13-231-28 Staying aboard vessels moored at Ala Wai or Keehi Small Boat Harbor.

(a) Staying aboard a vessel moored at Ala Wai or Keehi Small Boat Harbor is prohibited except that:

- (1) Owners holding a valid regular mooring permit, the spouse of each, their legal dependents, significant others and their nonpaying guests, when in the company of the owner, may stay aboard the vessel without a use permit upon written notification to the department on or before the date of stay; provided that the period does not exceed any three nights in a week and a total of any ninety nights in a calendar year, including vessel use as a vacation site;
- (2) Staying aboard a vessel in excess of any three nights in a week may be permitted when done in accordance with a valid:
 - (A) Stay aboard permit issued pursuant to section 13-231-22 (staying aboard transient or visiting vessels);
 - (B) Stay aboard permit issued pursuant to section 13-231-29 (vessel used as a vacation site);
 - (C) Stay aboard permit issued to a vessel owner holding a valid principal habitation [and harbor resident] permit authorizing a nonpaying bona fide guest to stay aboard the vessel in the company of the owner for a period not to exceed any thirty days in a calendar year; or
 - [(D) Harbor resident permit issued in accordance with section 13-231-26 (use of vessel as a place of principal habitation).]

(b) When staying aboard in accordance with subsection (a) (1), and the stay is extended past the third day, the entire period of stay will be counted against time used as a vacation site in accordance with section 13-231-29.

(c) Each harbor resident or other person authorized by the department to stay aboard a vessel in a small boat harbor in accordance with this chapter, except for those under the age of six, may secure one shower facility key. Prior to receiving the shower key, the person shall deposit with the State the amount specified in section 13-234-32. No person shall be permitted to replace a shower facility key more than two times. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9)

11. Section 13-231-29 Hawaii Administrative Rules, is amended to read as follows:

§13-231-29 Vessel used as a vacation site.

(a) Staying aboard a vessel moored in Ala Wai or Keehi Small boat harbor during a vacation is authorized but limited to owners holding valid regular mooring permits authorizing them to moor their vessels in the small boat harbor, the spouse of each, or significant other, their legal dependents, and nonpaying guests when accompanied by the owner, provided that:

- (1) The aggregate period of the stay is not more than thirty days in a calendar year;

- (2) The vessel owner secures a vacation permit and a stay-aboard permit for each individual vacationer;
- (3) The vessel and its occupants comply with the sanitation, vessel equipment, and all other requirements set forth under this chapter; and
- (4) The vessel owner provides evidence that the owner maintains a bona fide shoreside residence.

(b) No vacation permit shall be issued for a vessel registered or documented as being owned by a corporation.

[Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

12. Section 13-231-45 Hawaii Administrative Rules, is amended to read as follows:

§13-231-45 Vessel inspections.

(a) "Approved marine surveyor" as used in this section means a person who has been approved by the chairperson to inspect a vessel for an owner seeking a permit to moor a vessel in a small boat harbor in accordance with subsections (h) and (i). "Approved vessel inspector" as used in this section means an employee of the department who has been designated by the chairperson to inspect a vessel for compliance with criteria necessary to obtain a mooring permit. An inspection conducted by an approved vessel inspector is deemed to meet the requirements of the marine inspection required by section 200-13, Hawaii Revised Statutes, and shall be valid for a period of [only one] two years.

(b) Before a regular mooring permit is issued or renewed, the vessel owner shall complete a satisfactory vessel inspection conducted by an approved vessel inspector, or present a certificate not more than two years old to the department at the owner's own expense, signed by an approved marine surveyor certifying the surveyor has inspected the vessel and considers it to fulfill the minimum requirements described in the exhibit at the end of this chapter entitled "vessel inspection report". The department reserves the right to inspect any vessel to ensure that any deficiencies or omissions noted on a marine [survey] inspection have been corrected prior to issuing a mooring permit. All vessel owners shall also demonstrate to the department that their vessel is capable of navigating beyond the confines of the harbor and returning under its own power to its assigned mooring/berth prior to the mooring permit being issued.

(c) Commercial vessels carrying more than six passengers for hire are exempted from the provisions of subsection (b) when evidence of a current Coast Guard certificate of inspection is presented.

(d) Owners of vessels failing the vessel inspection shall have thirty days to correct deficiencies and complete the inspection. Failure to do so will preclude re-issuance of the use permit or be cause for rejection of the application for mooring.

(e) The department may extend the deadline for correction of deficiencies prescribed in subsection (d) if the vessel owner presents conclusive evidence to the department that the granting of additional time is reasonable and essential due to the necessity of replacing essential

parts and gear and that reasonable and diligent efforts by the owner to secure the items necessary to repair the vessel or replacement of parts is demonstrated, and further provided that any extension of time for compliance shall not exceed sixty days.

(f) Owners of vessels that fail the vessel inspection may contest the decision at an arbitration board as established in section 200-13, Hawaii Revised Statutes. The costs of the arbitration shall be borne by the vessel owner if it is determined that the vessel does not meet the minimum requirements to moor in a small boat harbor in accordance with these rules. No additional time allowance for the correction of deficiencies will be granted following arbitration and the vessel shall be removed from the harbor. The costs of the arbitration shall be borne by the State if it is determined that the vessel does meet minimum requirements.

(g) The fee for a vessel inspection conducted by the department, pursuant to this section shall be as prescribed in section 13-234-29.

(h) A person who desires to become an approved marine surveyor shall apply to the department upon a form furnished by the department and pay the application fee prescribed in section 13-234-30.

(i) An application to become an approved marine surveyor shall not be accepted by the department unless the applicant is engaged wholly or partly in the business of performing marine surveys for gain or compensation and the person's surveys are acceptable to at least one insurance company or surety company authorized to do business in the State [.] and is a member of a nationally recognized marine surveyor organization as approved by the department.

(j) An approved marine surveyor permit shall be valid for a period of three years from date of issuance. The department reserves the right to revoke any approved marine surveyor permit at any time prior to the expiration of the permit.

(k) A satisfactory vessel inspection shall consist of the following:

- (1) Presentation of the vessel to be inspected at a place designated by the harbor agent an approved vessel inspector;
- (2) A demonstration that the vessel is capable of being regularly navigated beyond the confines of the harbor or mooring area and maneuvering into and out of the assigned berth;
- (3) A finding that the vessel and all systems are in good material and operating condition;
- (4) A finding that the requirements described in the exhibit at the end of this chapter entitled "vessel inspection report" are met; and

Applicable standards published by the U.S. Coast Guard and the American Boat and Yacht Council, Inc. (ABYC) shall be used in conducting the vessel inspection, and are adopted and incorporated herein by reference.

(l) A marine survey shall be required for any vessel which has undergone any substantial reconstruction, alteration or modification of the original vessel design, certifying that such reconstruction, alteration or modification does not materially affect the vessel's stability or maneuverability, and the existing power plant is in good operating condition and meets the minimum power requirement necessary for safe navigation beyond the confines of the small boat harbor or offshore mooring area in which it is moored. A certificate of protection and indemnity

insurance for the vessel, in an amount of not less than \$100,000, naming the State as an additional insured, shall be required in addition to the marine survey.

(m) No modification or alteration to a houseboat moored in Ke'ehi Lagoon which changes the length, beam or size of silhouette area from that which existed at the time of issuance of the initial mooring permit shall be allowed without prior approval of the department, provided that routine maintenance and repairs for safety, security and structural integrity shall be allowed. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2) (Imp: HRS §§200-1, 200-2)

13. Section 13-231-57 Hawaii Administrative Rules, is amended to read as follows:

§13-231-57 Berthing or using commercial vessels in state small boat harbors; signs and other structures.

(a) This section is applicable in all state small boat harbors and boat launching facilities except Ala Wai and Keehi small boat harbors. This section is applicable to all commercial vessels including commercial fishing vessels engaged in charter fishing or any other trade or business; provided that commercial fishing vessels are exempt from this section if the total income derived from the use of the vessel is generated through the sale of fish or permitted coral.

(b) No commercial vessel shall load or discharge passengers or cargo or engage in any other commercial activity at any small boat harbor unless the owner possesses a regular mooring permit and a valid commercial permit issued by the department in accordance with this chapter. The foregoing restrictions shall not apply to any commercial vessel operated in connection with the lease of premises at a small boat harbor.

(c) Notwithstanding subsection (b), the department may authorize the owner of a transient or visiting commercial vessel engaged in a trade or business elsewhere to:

- (1) Carry passengers for hire in the above listed small boat harbors if the vessel will be so engaged as a registered participant in a bona fide fishing tournament;
- (2) While on cruise, off-load and load passengers in the above listed small boat harbors if those passengers are embarked elsewhere or bound for another destination; provided that a reservation for a berth was made in advance and space is available; or
- (3) Embark and disembark passengers occasionally and infrequently, not exceeding [eight] twenty four times in a calendar year on a special charter when approved not less than seven days in advance of the voyage.

(d) A use permit shall automatically expire upon the department's notice to vacate, if any vessel granted a temporary mooring permit under section 13-231-57(c) engages in a trade or business contrary to the provisions of the permit issued for the vessel while authorized to be moored in the above listed small boat harbors.

[Eff 2/24/94] (Auth: HRS §200-2, 200-4) (Imp: HRS §§200-2, 200-4)

[Eff]

14. Section 13-231-58 Hawaii Administrative Rules, is amended to read as follows:

§13-231-58 Limitations on the number of commercial use permits for vessels assigned permanent moorings.

(b) The total number of valid commercial permits which may be issued for vessels assigned permanent mooring in the following small boat harbors are:

<u>Harbor</u>	<u>Number of commercial permits</u>
(1) Ala Wai	0
(2) Keehi	0
(3) Heeia Kea	7
(4) Haleiwa	[8] <u>20</u>
(5) Waianae	15
(6) Nawiliwili	10
(7) Port Allen	12
(8) Kikiaola	3
(9) Kukuiula	4
(10) Hana	2
(11) Kaunakakai	9
(12) Lahaina	30
(13) Maalaea	29
(14) Honokohau	120
(15) Kawaihae (north)	4
(16) Kawaihae (south)	[14] <u>10</u>
(17) Kailua-Kona <u>Makai</u>	3
(18) <u>Kailua-Kona Offshore</u>	<u>8</u>

[(18)] <u>(19)</u>	Keauhou	6
[(19)] <u>(20)</u>	Wailoa	[20] <u>10</u>
[(20)] <u>(21)</u>	Reed's Bay	3

. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

15. Section 13-231-59 Hawaii Administrative Rules, is amended to read as follows:

§13-231-59 Limitations on commercial permits for vessels moored elsewhere.

(a) The department recognizes that it may be necessary or desirable to operate a commercial vessel from more than one small boat harbor, and that lack of mooring facilities in certain areas has required numerous vessels to establish permanent moorings offshore, outside of the small boat harbors of intended use. Therefore, notwithstanding section 13-231-57, the department may issue a limited number of commercial permits to owners of vessels moored elsewhere for use of small boat harbor facilities. The number and categories of those commercial permits shall be based on the physical capacity of the small boat harbor facilities to accommodate the additional volume of activity expected to be generated by the additional permits, and shall be determined by the department on a case-by-case basis for each small boat harbor, subject to the limitations listed in subsection (b).

(b) No commercial vessel moored elsewhere shall use any small boat harbor facilities for commercial purposes unless the owner of the commercial vessel moored elsewhere has been issued a commercial permit for that vessel, or the vessel is exempt from commercial use permit requirements under the provisions of subsection 13-231-57(c) or as otherwise permitted by the department. "Commercial purposes" as used in this subsection includes the staging, loading and discharge of passengers or supplies at a state boating facility for further transport to a vessel's offshore location by means of a water taxi or any other vessel, or provisioning a vessel before or after a voyage involving the carriage of passengers for hire.

(c) The number of commercial use permits for vessels moored elsewhere which may be issued for each small boat harbor shall be as follows:

- (1) Maalaea harbor: twenty;
- (2) Lahaina harbor: sixteen;
- (3) Manele and Heeia-Kea harbors: six each, except that for Heeia-Kea, commercial permits shall be limited to vessels having passenger categories I and II as listed in subsection (d), and may include the use of an auxiliary platform in an offshore operating area for which the owner has been issued a permit by the department; provided

that there shall be no increase in the level of commercial activity by the permittee, as of June 19, 1990, the effective date of Act 208, SLH 1990; and

- (4) All other small boat harbors: no limit. These limits notwithstanding, all valid commercial permits for vessels moored elsewhere in effect on the effective date of these rules shall be permitted to remain in effect and be eligible for reissuance provided that all other provisions of these rules are met.

(d) Each commercial permit issued for a vessel moored elsewhere shall be assigned one of the following categories, depending on the passenger-carrying capacity of the vessel named in the permit:

- (1) Category I- one to twenty-four passengers
- (2) Category II - twenty-five to forty-nine passengers
- (3) Category III - fifty to seventy-four passengers
- (4) Category IV - seventy-five to ninety-nine passengers
- (5) Category V - one hundred to one hundred forty-nine passengers

(e) No commercial use permit for vessels moored elsewhere shall be issued for any vessel with a passenger-carrying capacity in excess of one hundred forty-nine, and no existing commercial permit issued for a vessel moored elsewhere shall be issued a permit whenever the owner seeks to increase the passenger-carrying capacity above the limit of the category to which the [original] current permit was assigned.

(f) The department reserves the right to impose further restrictions on the operation of commercial vessels moored elsewhere, on a case-by-case basis, as may be necessary to reduce congestion and achieve more efficient use of small boat harbor facilities. Restrictions may include designation of docking times for passenger loading and unloading or fueling, and parking restrictions for patron and delivery vehicles. Additional restrictions shall be implemented by addenda to existing commercial permits issued by the department. Refusal of a permittee to accept or comply with additional restrictions implemented in this manner shall be cause for immediate termination of the use permit.

(g) Use of any vessel in violation of this section may be cause for termination of all small boat harbor use permits issued to the owner by the department. [Eff _____]

[Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

16. Section 13-231-61 Hawaii Administrative Rules, is amended to read as follows:

§13-231-61 Reissuance of commercial use permits.

(a) The department may reissue a commercial use permit provided that:

- (1) The gross receipts during the twelve-month period under the commercial permit from which the application for reissuance has been submitted, equals or exceeds the following minimums as applicable:
- (A) Vessel used for bare boat (demise)
Charters and charter sailboats \$7,000
 - (B) Vessels registered by the state or documented by the U.S. Coast Guard
to carry six passengers or less,
Including charter fishing boats \$15,000
 - (C) Vessels certified by the U.S. Coast Guard to carry seven to twenty-five passengers \$45,000
 - (D) Vessels certified by the U.S. Coast Guard to carry twenty-five to forty-nine passengers \$85,000
 - (E) Vessels certified by the U.S. Coast Guard to carry fifty to ninety-nine passengers \$125,000
 - (F) Vessels certified by the U.S. Coast Guard to carry more than ninety-nine passengers. \$250,000
 - (G) Vessels engaged in another trade or business not delineated and governed by an appropriate paragraph above \$7,000
 - (H) Water Sports Equipment Rentals \$7,000
- or
- (2) The permittee applies to the department in writing for reissuance of [the] a permittee's one time renewal of the commercial use permit and concurrently presents evidence that any failure to generate gross receipts from the operation of the permittee's vessel as prescribed in this subsection was due to:
- (A) The sinking, loss, or destruction of the permittee's vessel;

- (B) The permittee's vessel being inoperative in excess of sixty days due to disability of the permittee;
- (C) The permittee's vessel was rendered inoperative in excess of sixty days due to damage to the vessel, or due to the necessity of replacing essential parts and gear, provided that reasonable and diligent efforts by the permittee to secure such items necessary to repair the vessel or replacement of parts is demonstrated or
- (D) Where conditions and circumstances are demonstrated wherein a reissuance of the permittee's commercial use permit would be fair and warranted, and the application for reissuance is approved by the department; and
- (3) All fees and charges due and payable to the department have been paid and no violations are outstanding.

(b) No commercial use permit shall be issued to any permittee whose commercial use permit has been terminated for cause, provided that the permittee may apply for a new commercial use permit after one year has expired from date of termination of the commercial use permit, all fees and charges owing the State have been paid, and the permittee is in compliance with federal and state laws.

(c) A corporation must have been in continuous commercial operation as evidenced by the submission of monthly reports of gross receipts for a minimum of twelve months in order to retain use permits upon the transfer of any interest in that corporation. [Eff2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

17. Section 13-231-67 Hawaii Administrative Rules, is amended to read as follows:

§13-231-67 Limitation on commercial use permits issued for the use of state boat launching ramps.

(d)The maximum numbers of commercial permits which may be issued for the use of the following launching ramps are:

- | | | |
|-----|--------------|---|
| (1) | Ala Wai | none |
| (2) | Keehi | none |
| (3) | Heeia Kea | [7] <u>as provided for in section 13-256-73.1</u> |
| (4) | Maunalua Bay | 5 |
| (5) | Mala | 15 |

(6)	Kihei	15
(7)	Manele	3
(8)	Kaunakakai	5
(9)	Kukuiula	6
(10)	<u>Lahaina</u>	<u>none</u>
(11)	<u>Maalaea</u>	<u>none</u>
(12)	<u>Kikiaola</u>	<u>17</u>
(13)	<u>Nawiliwili</u>	<u>5</u>
(14)	<u>Port Allen</u>	<u>9</u>
(15)	<u>Waikaea</u>	<u>5</u>
(16)	<u>Honokohau</u>	<u>35</u>
(17)	<u>Kawaihae (N)</u>	<u>5</u>
(18)	<u>Kawaihae (S)</u>	<u>10</u>
(19)	<u>Puako</u>	<u>4</u>
(20)	<u>Pohoiki</u>	<u>4</u>
(21)	<u>Wailoa</u>	<u>10</u>
(22)	<u>Kailua Pier</u>	<u>6</u>
(23)	<u>Keauhou</u>	<u>11</u>
(24)	All others	no limit.”

(e) The maximum number of commercial use permits which may be issued for the use of any launch ramp is two (2) per corporation and/or sole proprietor.

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-39)
(Imp: HRS §§220-2, 200-3, 200-4, 200-10, 200-39)

18. Section 13-232-8 Hawaii Administrative Rules, is amended to read as follows:

§13-232-8 Marine toilets - restrictions.

(a) No toilet on a vessel or contrivance shall be operated so as to discharge any untreated sewage directly or indirectly into the waters of a small boat harbor.

(b) No person on a vessel or contrivance equipped with a toilet shall use, or permit the use of that toilet on the waters of a small boat harbor unless the toilet is equipped with facilities in good operating condition that will adequately treat, hold, incinerate, or otherwise handle sewage in a manner that is capable of preventing water pollution. A water pollution control device that is acceptable for the purposes of this section is any device determined by the director of the department of health to be effective in arresting the possibility of pollution from sewage passing into or through a toilet aboard a vessel or contrivance.

(c) No person shall live on board a vessel or contrivance in any small boat harbor unless it contains one or more toilets equipped with water pollution control devices in good operating condition and of a type acceptable to the director of health; provided that, the department may permit the operator or other persons to live on board a vessel not equipped with a toilet and acceptable water pollution control device for a period not to exceed the period described in sections 13-231-21 and 13-231-22 if:

- (1) The vessel is from another state or a country other than the United States and is temporarily using the waters of this State or if the vessel has a home port in the state but is visiting another small boat harbor;
- (2) Adequate on-shore toilet facilities are readily available for the use by the persons living on board; and
- (3) A toilet aboard the vessel is not used while in the small boat harbor.

"Readily available" as used in this section means within a walking distance of not more than two hundred feet.

d) Any harbormaster or authorized State official of a State operated small boat harbor, for the purpose of monitoring illegal discharge of human waste where it is prohibited by law may board any vessel, if the owner is aboard, for the purpose of inspecting the marine sanitation devise for proper operation and placing a dye tablet in the holding tank. Any dye released into harbor waters from a monitored vessel shall be considered proof of non-compliance and constitute grounds for immediate revocation of the owner's mooring permit. [Eff

]

[Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

19. Section 13-233-8 Hawaii Administrative Rule, is amended to read as follows:

13-233-8 Removal of vehicles.

The department or authorized representative, shall have the authority to detain, tow, move, or cause to be moved to an impounding area, at the owner's risk and expense and without liability for any damage which may result, any motor vehicle:

(1) For nonpayment of parking charges when the vehicle is parked in parking areas authorized representative in a small boat harbor for a period exceeding the posted time limits, except when prior arrangements have been made therefore;

(3) When the position or location of the vehicle in a small boat creates a nuisance or a hazard; provided, that any detention, towing, or moving, done or caused to be section 13-233-6; and (5) When any vehicle is used in any way for commercial or business use for storage of equipment or other business-related activity without a valid permit issued by the department or authorized representative. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

20. Section 13-233-27 Hawaii Administrative Rule, is amended to read as follows:

13-233-27 Charges for enclosure or obstruction of paid parking stall, incidental to construction, etc.

(a)
Before any person, other than a governmental agency, shall enclose, obstruct, or cause to be enclosed or obstructed any parking stall or portion thereof, incidental to erecting, constructing, enlarging, altering, repairing, moving, improving, converting, or demolishing any building or structure, or for other reasons, that person shall obtain a permit from the department or authorized representative, and pay to the department or authorized representative, a sum calculated at the rate currently being charged for each such parking stall for each day or fraction thereof, during which the stall shall also be so enclosed or obstructed.

(b) No permit to enclose or obstruct a parking stall shall be issued to any person to whom the foregoing provision is applicable until the person shall have made a deposit of the calculated sum, based on the estimated number of days during which the parking stall shall be so enclosed or obstructed. The person shall notify the department or authorized representative, immediately upon termination of the enclosure or obstruction. . [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

21. Section 13-233-28 Hawaii Administrative Rule, is amended to read as follows:

13-233-28 Harbor tenants – parking permits.

Notwithstanding any other provisions of this subchapter to the contrary, a person may park a motor vehicle in a parking stall in a pay-for-parking zone, in excess of the time limit and without payment for the parking stall, if the person has been issued a parking permit and displays a valid parking sticker (decal), or other approved permit method, issued to that person by the department, [on the left hand side of the rear bumper or as near thereto as the configuration of the motor vehicle permits], or has been issued a temporary parking permit and displays [this temporary]the parking permit in or on the vehicle so as to be clearly visible [from the outside]. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

22. Section 13-233-29 Hawaii Administrative Rule, is amended to read as follows:

13-233-29 Eligibility for parking permits; fee per vehicle

(a) Persons eligible for the parking permits described in section 13-233-28 and the fees for the permits are as follows:

Eligible persons	Fees Per Vehicle
(1) An owner holding a valid use permit (permitee) authorizing the mooring of the owner's vessel at the small boat harbor, and any co-owner <u>or their significant other</u> of the vessel.	\$25 per month
(2) The [master,] spouse of each owner and their legal dependents 18 years of age or older.	\$25 per month
(3) An owner [or], co-owner <u>or their significant other</u> , holding a valid use permit authorizing the mooring of the owner's vessel at the small boat harbor may secure a temporary parking permit, for use by bona fide guests accompanying the owner on board the vessel on a voyage outside the confines of the small boat harbor.	\$10 for each 24-hour period or fraction at thereof
(4) An owner or employee of a firm, business or organization operating under a lease or other agreement authorizing the owner, employee, firm, business, or organization to engage in a business or commercial activity at the small boat harbor.	\$90 per month
(5) <u>An owner, co-owner, spouse of each or their significant other, holding a valid temporary mooring permit authorizing the mooring of the owner's vessel at the small boat harbor or</u>	<u>shall not be less than \$130 per month</u>

other non-boating related person(s) parking in any paid parking stalls.

- (b) Fees for permits issued after the first month of a calendar quarter shall be prorated on a monthly basis.
- (c) Except as provided in subsection (a) (2), not more than one parking permit shall be issued to a person eligible for a parking permit. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

23. Section 13-233-30 Hawaii Administrative Rule, is amended to read as follows:

13-233-30 Replacement of mutilated sticker or other approved permit method.

The eligible holder of a parking sticker or other approved permit method, that becomes mutilated or illegible shall apply for and may be issued a replacement [sticker] parking permit if the mutilated or illegible [sticker] permit is surrendered to the department or authorized representative. A fee of \$15 shall be paid prior to the issuance of a replacement [sticker] permit. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

24. Section 13-233-31 Hawaii Administrative Rules, is repealed:

[13-233-31 Transfer of permits.

The holder of a parking sticker may upon surrender of a parking sticker apply for and be issued another parking sticker to be applied to another vehicle owned by the holder. A fee of \$1 payable in advance shall be paid prior to the issuance of a new sticker.] [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

25. Section 13-233-32 Hawaii Administrative Rule, is amended to read as follows:

13-233-32 Cancellation of permits.

The holder of a valid parking permit who disposes of the vehicle for which the permit was issued or who otherwise desires to cancel a parking permit may obtain a credit or refund as appropriate for any remaining unexpired month or months, upon surrender of the parking sticker, or other approved permit method, to the department or authorized representative. No credit or refund shall be given for portions of a month. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

26. Section 13-233-33 Hawaii Administrative Rule, is amended to read as follows:

13-233-33 Revocation of parking permits.

The department reserves the right to further restrict the issuance of parking permits to those who observe the small boat harbors rules and make full and timely payments of fees and charges. A parking permit may be revoked as provided in section 13-231-6. Upon revocation the permittee shall surrender the parking sticker, or other approved permit method, issued by the department or authorized representative. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

27. Section 13-233-34 Hawaii Administrative Rule, is amended to read as follows:

13-233-34 Violations and penalties.

- (a) It shall be a violation of this part for any person: (1) For failure to pay the posted fees.
- (2) To park, stop, or stand any vehicle across any line or marking of any paid parking stall or in such position that the vehicle shall not be entirely within the stall designated by the lines or markings.
- (3) To park, stop, or stand a towing vehicle with a boat trailer attached in any non-designated vehicle/trailer paid parking stall.
- (4) To permit another person not entitled thereto, to use or have possession of a parking sticker or other approved permit method.
- (5) To alter, forge, counterfeit, or imitate a parking sticker or other approved permit method.
- (6) To possess or use a parking sticker or other approved permit method, knowing it to have been altered, forged, counterfeited, or imitated.
- (7) To avoid or attempt to avoid compliance with this section by affixing to a vehicle, a parking sticker or other approved permit method, not authorized by the department.
- (8) To enclose, obstruct, or cause to be enclosed or obstructed any paid parking stall or portion thereof unless a permit has been obtained from the department as required in section 13-233-27.
- (9) To deface, injure, tamper with, open or willfully break, destroy, or impair the usefulness of any parking pay station installed under the provisions of this part.
- (10) To disregard any official direction, instruction, or restriction indicated by or on official signs posted in a paid parking zone.
 - (b) A person who has violated this section may be fined as provided in Hawaii Revised Statute [s] Section [13-230-4] 200-14. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

28. Section 13-234-1 Hawaii Administrative Rule, is amended to read as follows:

§13-234-1 General statement.

(a) The fees and charges relative to the use of state property and facilities at a small boat harbor are:

- (1) Calculated to produce an amount at least sufficient to pay the expenses of operating, maintaining, and managing the facilities and services and the cost including interest, of amortizing capital improvements for boating facilities appropriated after July 1, 1975, including, but not limited to, berths, slips, and related accommodations, exclusive of the costs of constructing, operating, and maintaining general navigation channels, protective structures, and aids to navigation; and
- (2) Fixed with due regard to the primary purposes of providing public recreational facilities and promoting the fishing industry. See sections 200-2 and 200-08, Hawaii Revised Statutes.

(b) Nothing contained in this subchapter shall be construed to limit the authority and power of the department to [waive any fees] waive or reduce any late charges and interest that may be incurred by a permittee, or to assess any reasonable fees and charges in addition to those specifically provided in this subchapter for trivial or infrequent uses of state property, facilities, or services; if fees for the uses are not contained herein; or as the circumstances may warrant.

(c) The acceptance of payment or billings there for, shall not waive the nature of trespass or ratify or permit illegal mooring, docking, storage or parking.

[Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-10) (Imp: HRS §§200-2, 200-3, 200-10)

29. Section 13-234-13 Hawaii Administrative Rule, is amended to read as follows:

§13-234-13 Gear locker fee.

(a) The charge for the use of gear lockers provided by the State shall be:

- (1) Standard wood locker [\$5.50] \$10.00 per month
- (2) Triangular fiberglass locker [\$3.00] \$6.00 per month

(b) In the event that permission is given by the department for a boat owner to provide a personal gear locker pursuant to section 13-232-44, the charge, while the permit remains in effect, shall be thirty per cent of the rate established in subsection (a). [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-2, 200-12)

30. Section 13-234-15 Hawaii Administrative Rule, is amended to read as follows:

§13-234-15 Waiver of fees.

[The department reserves the right to waive or reduce any fees or charges contained in this chapter.] The department reserves the right to waive or reduce late charges and interest that may be incurred by a permittee.

[Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-2, 200-4, 200-7, 200-12)

31. Section 13-234-16 Hawaii Administrative Rule, is amended to read as follows:

§13-234-16 Permit processing fees.

The charge for the processing of a use permit shall be as follows:

- (1) Initial issuance of permanent permit for docking, mooring, or anchoring a vessel (see section 13-231-3) [\$5] \$10.00; initial issuance of commercial permit [\$25] \$50.00;
- (2) Renewal of permanent permit for docking, mooring, or anchoring a vessel (see section 13-231-5) [\$5] \$10.00; renewal of commercial permit [\$15] \$30.00;
- (3) Revision of permit:
 - (A) At owner's request [\$5] \$10.00; or
 - (B) By department's action (see section 13-231-7) no charge; and
- (4) All other use permits listed in section 13-231-3:
 - (A) Initial issuance [\$5] \$10.00;
 - and
 - (B) Renewal of permit [\$3] \$10.00.

If a permittee utilizing any property or facility fails to renew a use permit on or before the date on which it expires, the applicable renewal fee plus a penalty fee of \$1 per month shall be collected from the permittee for each month or fraction of a month the permittee is late in applying for renewal of a permit and any other penalty fees provided by these rules. [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-2, 200-12)

32. Section 13-234-25 Hawaii Administrative Rule, is amended to read as follows:

§13-234-25 Fees and charges for commercial vessels at state small boat harbors.

(a) The provisions of section 13-234-3 notwithstanding, the following fees and charges shall be assessed for mooring in, or use of, state small boat harbor facilities and services by a commercial vessel:

- (1) For vessels with a commercial and regular mooring permit. The fee per month, per vessel, for mooring of and use of the small boat harbor or any of the facilities by a commercial vessel in these harbors shall be two times the mooring fees prescribed in section 13-234-3 or [two] three per cent of the monthly gross receipts, whichever is greater. In addition to the aforementioned fee for mooring a commercial vessel in these small boat harbors, the permittee shall also pay fees and charges in the amounts prescribed in these rules for any other facilities and services utilized in the small boat harbor.
- (2) For vessels with a commercial permit only, the fee per month, per vessel for the use of these small boat harbors or any of their facilities by a commercial vessel moored elsewhere shall be the greater of [\$100] \$200.00 or [two] three per cent of the monthly gross receipts.
- (3) The report of gross receipts shall be received by the department not later than the end of the month following the reported month and shall be submitted on a form acceptable to the department. Failure to submit the report of gross receipts as required shall be cause for termination of the commercial permit.
- (4) For vessels which have been issued a valid commercial permit for the use of more than one small boat harbor, the permittee shall designate the small boat harbor of principal use, and the [two] three per cent of monthly gross receipts shall be paid to that account. The fees for commercial permits issued for other small boat harbors shall be the minimum amount specified in paragraph (2)
- (5) For vessels issued a temporary mooring permit and a commercial permit, the fee per month shall be the greater of the temporary mooring fees required by section 13-234-5 or [two] three per cent of the monthly gross receipts.
- (6) Audit. The department reserves the right to conduct an audit as necessary to determine the fees owing to the department, and any other information necessary and proper to enforce these rules.

[Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

33. Section 13-234-26 Hawaii Administrative Rule, is amended to read as follows:

§13-234-26 Passenger fees.

(a) Any passenger or cruise vessel which is used for private gain and does not have a valid mooring permit or commercial permit and which uses state small boat harbors property or facilities shall pay the following fees in addition to any other fees required by this chapter:

- (1) Per passenger (includes in transit)
embarking to or from shore to ship.....\$2
- (2) Passengers in transit on a vessel
on a continuous trip whose point
of origin and termination is a
state small boat harbor, a total
of disembarking and embarking at
each port per passenger.....\$1.50
- (3) Passengers embarking and disembarking
on occasional and infrequent use on
special charter when approved in
advance of voyage as provided in
section 13-231-57(c) (3).....\$1.50

(b) Any passenger vessel using a dock, pier or wharf in a state small boat harbor for disembarking and embarking passengers by means of any boat or lighter while moored offshore, shall pay a fee per passenger for disembarking and embarking at each small boat harbor as follows:

- (1) Passenger vessels engaging only
in interisland commerce:.....\$ [.30] \$1.00
- (2) Passenger vessels engaging in international
or inter-state commerce:.....\$[1.00] \$2.00

Vessels operated by a federal or state agency are exempt from the provisions of this subsection.

(c) A report shall be filed with the department on a form acceptable to the department within thirty days after the date of embarking or disembarking of passengers over state facilities and the charges due shall be remitted along with the report. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

34. Section 13-234-28 Hawaii Administrative Rule, is amended to read as follows:

§13-234-28 Negotiable instruments; service charge.

(a) The service charge for any dishonored check, draft, certificate of deposit or other negotiable instrument is [§12] \$25.00.

(b) Payment to and acceptance by the department of the service charge for a check, draft, certificate of deposit or other negotiable instrument, shall not be construed as a waiver of any violation of the Hawaii Penal Code, chapters 701 to 713, Hawaii Revised Statutes, or of these rules. [Eff 2/24/94] (Auth: HRS §200-2) (Imp: HRS §200-2)

35. Section 13-234-29 Hawaii Administrative Rule, is amended to read as follows:

§13-234-29 Vessel inspection fee.

The fee for a vessel inspection performed by the department prior to the issuance or reissuance of a regular mooring permit shall be [§15] \$50.00. The fee is not refundable. A vessel owner shall make an appointment with the harbor agent not less than five working days prior to having the vessel inspected. A fee of [§10] \$20.00 shall be charged if notice of cancellation by the vessel owner is not given to the harbor agent not less than two working days prior to the scheduled inspection. The fee for vessels exempted from numbering in section 13-231-2, Hawaii Administrative Rules, and open skiffs and dinghies less than thirteen feet in length shall be \$5.

[Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §200-10)

36. Section 13-234-31 Hawaii Administrative Rule, is amended to read as follows:

§13-234-31 Fee for commercial use of boat launching ramps and other boating facilities.

The fee for the use of state launching ramps, wharves, or other state boating facilities except state small boat harbors shall be [§75] \$200.00 per month or [two] three per cent of gross receipts, whichever is greater. The single fee assessed for the use of a state launching ramp shall entitle the permittee to use any other state launching ramp on the same island without additional charge, except for those launching ramps listed in section 13-231-67. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§226-2, 200-4)

37. Section 13-243-5 Hawaii Administrative Rules, is repealed.

§13-243-5 Recognition of marine examination decals.

[§13-243-5 Recognition of marine examination decals. In order to free enforcement personnel for other inspections and duties and in recognition of the exacting requirements of the Courtesy Marine Examination, enforcement personnel shall not stop and board any vessel properly displaying a valid United States Coast Guard Auxiliary Courtesy Marine Examination decal for the purpose of determining compliance with this chapter except upon reasonable belief that the vessel is being operated in violation of these rules or other regulations or laws. [Eff 2/24/94; R]

38. Section 13-244-2 Hawaii Administrative Rule, is amended to read as follows:

§13-244-2 Rules of the road.

(a) Persons operating vessels on inland waters shall comply with the U. S. Coast Guard Navigation Rules, COMDTINST M16672.2B, as they existed on August 17, 1990, and as amended thereafter, which by reference are incorporated in this chapter.

(b) Persons operating vessels on the high seas shall comply with the U. S. Coast Guard Navigation Rules, COMDTINST M16672.2B, as they existed on August 17, 1990, and as amended thereafter, which by reference are incorporated in this chapter. [Eff 2/24/94] (Auth: HRS §200-24) (Imp: HRS §§200-22, 200-24)

(c) Any person operating any type of motorized vessel on the waters of the state shall be required to possess, and make available upon demand of enforcement personnel, a certificate of completion from a State of Hawaii and National Association of State Boating Law Administrators (NASBLA) approved course on the safe use and operation of a motorized vessel. Exempt from this requirement would be persons who:

(1) Possesses a valid license to operate a vessel issued for maritime personnel by the United States Coast Guard pursuant to 46 CFR Part 10 or a marine certificate issued by the Canadian government; or

(2) Possesses a state-approved non-renewable temporary operator's permit to operate the motorboat which is valid for 60 days and was issued with the certificate of number for the motorboat if the boat is new or was sold with a transfer of ownership; or

(3) Possesses a rental agreement or lease agreement provided pursuant to section 200-29 of this part, which lists the person as an authorized operator of the motorboat; or

(4) Are not residents of the State, are temporarily using the waters of the State for a period not to exceed 60 days, and meet any applicable requirements of the state of residency or possesses a Canadian Pleasure Craft Operator's Card; or

(5) Operates a vessel under supervised training, as authorized by the State.

(d) Possess a certificate of completion of a NASBLA approved course and complete the portions of a certificate course with State-specific information for Hawaii through a provider approved by the State.

(e) A person or the person's agent or employee engaged in the business of renting or leasing motorboats for a period not exceeding 30 days shall not rent or lease a motorboat to any person for operation on the waters of the State unless the person:

(1) Meets all the provisions this section; and

(a) A person or the person's agent or employees engaged in the business of renting or leasing motorboats shall list on each rental or lease agreement for a motorboat the name and age of each person who is authorized to operate the motorboat. The person to whom the motorboat is rented or leased shall ensure that only those persons who are listed as authorized operators are allowed to operate the motorboat.

(c) A person or the person's agent or employee engaged in the business of renting or leasing motorboats shall provide to each authorized operator of a motorboat a summary of the statutes and regulations governing the operation of a motorboat and instructions regarding the safe operation of the motorboat. Each person who is listed as an authorized operator of the motorboat shall review the summary of the statutes, regulations and instructions before the motorboat departs from the rental or leasing office.

(f) A person who is operating a motorboat on any waters of the State and who is stopped by a law enforcement officer in the enforcement of this part or the rules adopted pursuant thereto shall present to the officer evidence that the requirements of this section have been met. Failure to present the evidence that the requirements of this section have been met shall constitute prima facie evidence of a violation of this section.

(1) A person who alters, forges, counterfeits or falsifies a certificate or other document used as evidence that the requirements of this section have been met; or who possesses a certificate or other document that has been altered, forged, counterfeited or falsified; or who loans or permits their certificate or other document to be used by another person shall be guilty of a misdemeanor.

(2) A person who fails to present the certificate or other document as evidence that the requirements of this section have been met is guilty of a misdemeanor unless the person presents the required documents in the courts that prove the person was operating the motorboat in compliance with this part on the date of the violation.

(3) A person or the person's agent or employee renting or leasing motorboats who fails to request and inspect certificates or other documents as evidence that the requirements of this section have been met by the authorized operators is guilty of a misdemeanor.

(4) The courts may fine a person not more than \$1,000 or less than \$50 for each violation, and any vessel, the agents, owner, or crew of which violate the rules of the department or this part, shall be fined not more than \$1,000 or less than \$50 for each violation; provided that in addition to or as a condition to the suspension of the fines and penalties, the court may

prohibit a person who is found to have violated any of the provisions of this part from operating a motorboat upon the waters of the State until the person successfully completes the safe boating education course approved by NASBLA and certified by the State.

(5) In any proceeding for a violation of this part, the courts may suspend all or part of the fine to be imposed on the defendant if the defendant completes the safe boating education course approved by NASBLA and certified by the State within the time limits imposed by the courts.

(g) The agency may adopt necessary rules to carry out the provisions of this part, including provisions for issuance of certificates, duplicate certificates, record keeping, cooperative agreements, name and address changes, the establishment of fees for boating safety courses and certificates, and equivalency exam criteria.

(h) The State may recognize reciprocity with other states' NASBLA approved portion of the boating safety course; however, all operators shall be required to complete the portions of a certificate course for Hawaii that includes, but is not limited to:

(1) Local ocean safety principles and practices;

(2) The historical, cultural, and customary practices of Hawaii's ocean users; and

(3) any rules or laws pertaining to protected species and motor vessel operation in the State.

(i) This requirement shall apply to persons:

(1) Less than 30 years of age, one year after being adopted;

(2) Less than 50 years of age, two years after being adopted;

(3) 50 years of age or older, three years after being adopted.

[Eff 2/24/94] (Auth: HRS §200-24) (Imp: HRS §§200-22, 200-24)

39. Section 13-244-19 Hawaii Administrative Rules, is amended to read as follows:

13-244-19 Authorization required to hold regatta, marine parade, boat race or exhibition.

(a) Definition of terms used in this chapter. "Regatta" or "marine parade" means an organized water event of limited duration which is conducted according to a prearranged schedule.

(b) Authorization required; submission of application.

(1) Any person or organization planning to hold a regatta or marine parade which, by its nature, circumstances or location, will introduce extra or unusual hazards to the safety of persons or property on the waters of the State shall submit an application to the chairperson of the board of land and natural resources or the person(s) designated by the chairperson. No person shall hold such a regatta or marine parade, unless the authorization of the chairperson, or the person(s) designated by the chairperson, has been

secured, except that the chairperson's authorization is not required if prior authorization has been secured from the United States Coast Guard. Examples of conditions which are deemed to introduce extra or unusual hazards to the safety of life include, but are not limited to: an inherently hazardous competition, the customary presence of commercial or pleasure craft in the area, any obstruction of navigable channels which may reasonably be expected to result, and the expected accumulation of spectator craft.

[(2) Where the events are to be held regularly or repeatedly in a single area by an individual or organization, the chairperson or the person(s) designated by the chairperson, may subject to conditions set from time to time by the department, grant a permit for the series of events for a fixed period of time, not to exceed one year.]

[(3)] (2) The application and all required documents listed on the application, shall be submitted no less than thirty days prior to the start of the proposed event. If the application is not received no less than thirty days prior to the start of the proposed event, the application may be rejected.

(4) The application shall [include the following details:] be completely filled out and include the following:

- [(A) Name and address of sponsoring organization.
- (B) Name, address and telephone number of person or persons in charge of the event.
- (C) Nature and purpose of the event.
- (D) Information as to general public interest.
- (E) Estimated number and type of watercraft participating in the event.
- (F) Estimated number and type of spectator craft.
- (G) Number of boats being furnished by sponsoring organization to patrol event
- (H) Time schedule and description of events.]

[(I)] (A) A detailed and readable section of a chart or scale drawing showing the boundaries of the event, various water courses or areas to be utilized by participants, officials and spectator crafts.

(B) The applicant shall pay a non-refundable \$25.00 application and processing fee for each event day at the time the application is submitted.

(C) A general liability insurance certificate issued to the sponsoring organization, which shall name the State of Hawaii as an additional insured. The liability insurance policy limits shall be in accordance with Section 13-231-65.

(1) The Division of Boating and Ocean Recreation has the right to cancel any and all marine event permits if the Division feels there is a risk to public safety.

(2) An authorization by the chairperson or the person(s) designated by the chairperson, does not exempt a person from holding an event from compliance with applicable federal law.

[Eff 2/24/94] (Auth: HRS §200-24) (Imp: HRS §§200-22, 200-24)

40. Section 13-256-3 Hawaii Administrative Rules, is amended to read as follows:

§13-256-3 Commercial [operator] use permit requirements. HOLD

(a) All operators of commercial vessels, water craft or water sports equipment shall apply for a commercial [operator] use permit to be issued by the department. The applicant for such permit shall comply with the applicable provisions stated in Hawaii Administrative Rules, and Ocean Waters, Navigable Streams and Beaches, [Sections 13-251-1 through 13-251-20] Sections 13-231-50 to 13-231-70. [A valid commercial use permit issued to the owner of a vessel to operate from state harbor or launching ramp facilities shall satisfy the commercial operator permit requirement of this section for the operation of that particular vessel.]

(b) The department [shall] may establish and maintain a Recreation Advisory Committee of not less than three for each recreation management area as defined in this chapter to review and make recommendations for commercial [operator] use permit to be issued by the department as required by this section. The department shall consider the recommendations of the Advisory Committee, but is not bound by the recommendations. Members of the Recreation Advisory Committee shall have not less than three years experience in their area of specialty. [Eff 2/24/94] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

41. Section 13-256-4 Hawaii Administrative Rules, is amended to read as follows:

§13-256-4 Commercial vessel and water sports equipment registration requirements.

(a) All commercial vessels, water craft or water sports equipment shall be registered with the department for commercial use in compliance with [Sections 13-251-36 to 13-251-52] the Division's Commercial use permit standards and regulations, sections 13-231-50 to 13-231-70.

(b) Commercial use permits issued by the department for commercial vessels operating from state harbors or boating facilities are exempt from the requirements of this section. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

42. Section 13-256-5, Hawaii Administrative Rules, is amended to read as follows:

§13-256-5 Commercial use permits; public auction.

(a) Unless otherwise provided by law, all commercial use permits issued by the department under this chapter for thrill craft, [or] parasail, water sledding and high speed boating operations may be made at public auction under sealed bid after public notice.

43. Section 13-256-11 Hawaii Administrative Rules, is amended to read as follows:

§13-256-11 Fees.

(a) Fees required to be paid to the department are as follows:

- (1) Registration fee. A registration fee payable at time of issuance and renewal shall be as prescribed in section 13-253-1;
- (2) [Operator] Commercial use permit fee. A commercial [operator] use permit fee payable at time of issuance and or renewal of the permit shall be as prescribed in §13-253-2;
- (3) Commercial operating area use permit fee. A monthly commercial use permit fee shall be the greater of [\$75.00] \$200.00 per month, payable in advance, or [2%] 3% of the monthly gross receipts. The report of gross receipts shall be submitted to and received by the department not later than the end of the month following the month covered by the report and shall be submitted on a form acceptable to the department. A permittee possessing both a harbor commercial use permit and a commercial operating area use permit who is paying [2] 3% of gross receipts under the commercial harbor use permit shall not be required to pay an additional [2] 3% of gross receipts under the commercial operating area use permit.

(b) Delinquency in the payment of any fees owed to the department will result in automatic revocation of the commercial operating area use permit. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

44. Section 13-256-15 Hawaii Administrative Rules, is amended to read as follows:

§13-256-15 Commercial vessel shoreline access.

No commercial vessel shall land, embark or discharge passengers at any State or County facility, or at other public beaches except for locations at which the permittee has been issued an appropriate permit by the department [or] and a lease or permit by the Board of Land and Natural Resources [or] and a county permit, [or] and within designated ingress/egress zones. [Eff 2/24/94] (Auth: HRS

§§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

45. Section 13-256-17, Hawaii Administrative Rules, is amended to read as follows:

§13-256-17 Recreational thrill craft operations.

(a) Access to and from designated recreational thrill craft operating areas shall be by the most direct route consistent with safety considerations. Thrill craft operators shall not exceed a speed of slow-no-wake when within three hundred feet of the shoreline.

(b) In non-designated ocean recreation management areas, recreational thrill craft may operate only in state waters between five hundred feet from the shoreline or the outer edge of the fringing reef whichever is greater and two miles off the islands of [Kauai], Oahu, Maui and Hawaii.

(c) In designated ocean recreation management areas, recreational thrill craft may operate only within locations designated for recreational thrill craft use and when traversing through ocean recreation management areas, thrill craft must proceed in the most safe and direct route possible to the non-designated areas.

(d) No thrill craft shall be operated for profit or gain in a recreational thrill craft operating area.

(e) Recreational thrill craft may gain access to state waters only from launching or harbor facilities or from private beach front property. [Eff 2/24/94] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

46. Section 13-256-18 Hawaii Administrative Rules, is amended to read as follows:

Section 13-256-18 Commercial thrill craft operations, commercial high speed boating and water sledding operations.

(a) No commercial thrill craft, high speed boating or water sledding activities shall be conducted on the waters of the State unless the owner has applied for and been issued a commercial operating area use permit for a designated commercial thrill craft, high speed boating or water sledding operating area, in addition to any commercial use permit required for state-owned facilities. No more than one commercial operating area use permit shall be issued to an owner to conduct commercial thrill craft, high speed boating or water sledding.

(b) Commercial thrill craft are limited to operating within a two hundred foot radius of the permitted designated location except as otherwise designated. The number of thrill craft permitted to operate within each commercial thrill craft operating area shall be as directed by the department, not to exceed a limit of six rental units and two safety units per area. Water sledding operations may be conducted in the designated thrill craft areas only if no other thrill craft activity is ongoing in said area.

(c) No more than one vessel shall be permitted to operate under a commercial operating area use permit issued for high speed boating or water sledding.

(d) Access to and from designated areas shall be only from harbors and ramp facilities, or areas designated by a valid conservation district use permit issued by the Department of Land and Natural Resources or areas designated by the Department.

(e) Commercial thrill craft, high speed boating and water sledding operators shall proceed at a speed of slow-no-wake, or as otherwise posted, by the most direct route consistent with safety considerations. Thrill craft, high speed boating and water sledding operators shall not exceed a speed of slow-no-wake when within three hundred feet of the shoreline.

(f) No other activity is permitted in designated commercial thrill craft operating areas or recreational and commercial water skiing or water sledding areas during the time of authorized operations for safety purposes.

(g) Commercial thrill craft operators shall be required to establish a safety instruction program for customers that includes, but is not limited to, the safe use of a thrill craft, boundaries of operating areas and the use of a personal flotation device. [Eff 2/24/94 am July 5, 2003] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-24, 200-37)

47. Section 13-256-19 Hawaii Administrative Rules, is amended to read as follows:

§13-256-19 Parasailing activities.

(a) Parasailing operators shall comply with rules and regulations promulgated by the U. S. Coast Guard in addition to the following provisions:

- (1) All parasailing vessels shall have access to designated areas only from harbors or ramp facilities by the most direct route consistent with safety considerations.
- (2) No commercial parasailing vessel shall operate on the waters of the State unless the owner has applied for and been issued a commercial operating area use permit for a designated parasail operating area, in addition to any commercial use permit required for state-owned facilities.
- (3) No operator shall be issued more than one commercial [operating area] use permit for a designated parasailing operating area.
- (4) No permittee shall be allowed to operate more than one parasail vessel with a parasail aloft in the designated parasailing operating area.
- (5) No parasailing vessel shall be engaged in parasailing activities while it is within three hundred feet of the shoreline or any marked channel entrance.
- (6) All parasail vessels shall carry at least one crew member in addition to the captain whose duty it shall be to observe the passenger in the chute.

(b) Parasailing operations shall be curtailed in certain designated areas under this chapter as necessary to avoid possible adverse impacts on humpback whales or other protected marine life. In designated areas during the whale season, the maximum vessel speed for parasailing shall be eighteen (18) knots, and maximum transit speed for shuttling passengers to and from the parasailing zones shall be fifteen (15) knots or minimum planning speed, whichever is less, unless governed by other limits such as slow-no-wake zones or as marked by signs. [Eff 2/24/94] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

48. Section 13-256-24 Hawaii Administrative Rules, is amended to read as follows:

§13-256-24 Kauai tow-in-surfing & thrill craft operating areas and access.

(a) Areas of ocean waters, excluding the designated on ocean recreation management areas (ORMA), surrounding the island of Kauai. Where tow-in-surfing is allowed, are shown on Exhibit “1-B,” titled “Ocean Recreation Management Areas Designated Tow-in-surfing Areas Island of Kauai”. Dated January 4, 2002, located at the end of this subchapter, and described as follows (all positions of latitude and longitude are provided in global positioning system (GPS) coordinates): which includes waters seaward and perpendicular to the shoreline beginning at Kailiu Point [at 22 degrees 13.430 minutes north, 159 degrees 34.855 minutes Tow-in-surfing operations only allowed during high surf advisory and or warning issued by the National Oceanic and Atmospheric Administration (NOAA) for the North West facing shores of Kauai.

- (1) Area I, (Kailiu Point to the southern point of Moloa’a Bay), west, then east along the shoreline (including Hanalei Bay) and ending at the southeastern point of Moloaa Bay [at 22 degrees 11.675 minutes north 159 degrees 19.495 minutes west;]
- (2) Area II, (northern point of Papa’a Bay to Hanamaulu Bay). Which includes waters seaward and perpendicular to the shoreline beginning at the northeast point of Papa’a Bay [at the 22degrees 10.675 minutes north, 159 degrees 18.630 minutes west], then south along the shoreline and ending at Hanamaulu Bay [at 21 degrees 59.658 minutes north, 159 degrees, 20,050 minutes west;]
- (3) Area III, (Hanapepe Bay to Miloli’i). Which includes the waters seaward and perpendicular to the shoreline, beginning at Hanapepe Bay [at 21 degrees 53.755 minutes north. 159 degrees 35.855 minutes west]. Then west and north along the shoreline ending at the shoreline at Keawanui Point, [at 22 degrees 09.000 minutes north, 159 degrees 43.385 minutes west.]

Persons engaged in tow-in-surfing activities may extend their operation into designated ORMA waters for board and personnel recovery, rescue, and emergency purposes.

(b) Training and instruction in tow-in-surfing techniques may be conducted on a case-by-case basis at selected areas in accordance with a permit issued pursuant to section 13-244-19, provided that the trainee is under the direct supervision of an instructor who possesses a certificate of completion as described in section 13-256-22 (g).

(c) Notwithstanding other rules in this chapter, there will be no thrill craft operation on Kauai's North and West facing shores unless there is a high surf advisory and or warning for said North and West facing shores of Kauai. And thrill craft is engaged in tow-in-surfing.

(d) Thrill craft operating areas: Areas of ocean waters, excluding the designated ocean recreation management areas (ORMA), surrounding the island of Kauai where thrill craft operation is allowed are shown on Exhibit "G" located at the end of this sub chapter.

The southern point, of Moloa'a Bay, to the Northern point of Hanamaulu Bay. Thrill Craft access to this area shall be from Waikaea boat ramp, and

(e) From Kuunakaole point (southern end of Salt pond beach), to Makaha point. Thrill craft access to this area shall be from Kikiaola Small boat harbor.

Thrill craft operators, shall operate thrill craft five hundred (500) feet offshore, or the outer edge of the fringing reef, which ever is greater.

(f) The tow-in-surfing practice site shall be at Nohili Point located of the PMRF Naval Base. For advisories they shall call the recorded line at (808) 335-4229 for information on the following days operations and (808) 335-4301 (Range Control) if more information is required. [Eff 7/5/03] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-37)

49. Section 13-256-32 Hawaii Administrative Rules, is amended to read as follows:

§13-256-32 [Commercial Operator Licensee experience requirements.]

[Commercial Operator Licensee experience requirements.] Experience requirements to operate in or on the waters of the north shore Kauai ocean recreation management area.

(a) [No commercial vessel operator shall be issued a commercial operator permit to operate or navigate within the Na Pali Coast ocean waters unless the applicant has a minimum of ninety days experience operating within the Na Pali Coast ocean waters attested to by two persons each of whom holds a valid commercial operator permit issued by the department.

(b) No commercial kayak tour guide license shall be issued a commercial operator licensee unless the operator meets the following conditions:

(1) Possesses a current Red Cross Advanced Life Saving

Certificate,

(2) Has knowledge of elementary first aid;

(3) Is physically qualified to perform as a kayak tour guide as evidenced by a written report of a physical examination made no earlier than thirty days prior to the application for the license; and

(4) Demonstrates a satisfactory knowledge of the waters through presentation of a log of ocean kayak trips performed in the Na Pali Coast restricted area during the preceding six-month period.

(c) The department shall establish an advisory committee of not less than three commercial operator licensees to review applications and make recommendations for commercial operator licenses required by this section. The department may seek recommendations for membership on the advisory committee from the North Shore Charter Boat Association. Members of the advisory committee shall have not less than three years experience in their area of specialty operating in the North Shore Kauai Ocean Recreation Management Area.] All commercial permittees wishing to conduct business in or on the waters of the north shore Kauai ocean recreation management area, as shown on Exhibit "A", North Shore Kauai Ocean Recreation Management Areas, dated June 30, 1988 and located at the end of this subchapter, shall provide documentation that the vessel operators possess:

(1) A current adult CPR and first aid certificate;

(2) A minimum of ninety days documented experience on the waters of north shore ocean recreation management area. Supporting documentation of the competency of the operator may be provided through:

(A) Two letters of recommendation by commercial vessel operators that have the aforementioned requirements.

(B) United States Coast Guard U.S. Merchant Marine Officer License, USCG Captain's License.[Eff 2/24/94](Auth: HRS §§200- 200-3, 200-4) (Imp: HRS §200-2, 200-3,200-4)256-17

50. Section 13-256-33 Hawaii Administrative Rules, is amended to read as follows:

§13-256-33 Priority and procedures in the issuance of commercial use permits.

[(a) Notwithstanding the commercial use permit limitations in section 13-256-36 of fifteen commercial use permits at Hanalei River mouth and two commercial use permits for Anini Beach launching ramp, all commercial vessels operating with valid commercial use permits issued by the department on September 30, 1988, and who have complied with all the rules of

the department and all other federal, state or county requirements may be issued a new commercial use permit for Hanalei or Anini Beach restricted Area.]

[(b)] (a) All commercial use permits shall be valid for not more than one year. These permits shall automatically terminate on the expiration date and there shall be no presumption or implication of a right to renew.

[(c)] (b) An application for a commercial use permit shall be made in writing to the department on the form provided by the department. The applicant shall indicate in the application the type and characteristics of the vessel, including but not limited to the vessel's overall length, draft, beam, principal source of propulsion, and any secondary or auxiliary source of propulsion, the passenger carrying capacity, and any other pertinent information. No application shall be complete until the applicant pays the application fee prescribed in these rules. The department shall accept the completed application form for consideration by endorsing it and entering the time and date on the application form submitted. The time and date the application is endorsed by the department shall be the effective filing date and shall establish the applicant's priority date. An applicant must file a new application form each year but the effective filing date shall remain the same.

[(d)] (c) Only when the number of commercial use permits issued under subsection (a) falls below the number authorized in section 13-256-[36] 38 or 39, will the department offer a permit to the applicant with the earliest priority date; provided that in no event shall the limit set in section 13-256-[36] 38 or 39 be exceeded thereby. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

51. Section 13-256-34 Hawaii Administrative Rules, is amended to read as follows:

§13-256-34 Review, acceptance, or rejection of the application.

(a) The department shall [examine and determine the genuineness of] review each application for a commercial [vessel] use permit and may require additional information or conduct an independent investigation or audit [as may be deemed necessary for its determination].(b) The department shall reject any application that contains a material misstatement or if the applicant has failed to disclose any material fact in the application.(c) An application shall not be accepted for consideration and shall be rejected if:

(1) The application fee is not paid at the time

the application is made;

(2) The applicant is delinquent in payment of

any moneys due and payable to the department; [or]

(3) The applicant is in violation of the rules of

the department and/or Hawaii Revised Statute [.] or:

(4) It is determined that the application is incomplete.

(d) [Upon rejection of] When an application [.] is rejected, the department shall notify the applicant [.] in writing within [a reasonable time,] ten working days that the application has not been accepted for consideration and has been rejected and the reasons [therefore] for the rejection. The applicant shall be afforded the opportunity to submit a new application [upon the correction of deficiencies cited in the notification of rejection of the original application] when the cited deficiencies have been corrected. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

52. Section 13-256-35 Hawaii Administrative Rules, is amended to read as follows:

§13-256-35 [Owner] Permittee required to report change in ownership, address and other changes.

(a) [In addition to the provisions in section 13-251-44, the]. The holder of any commercial [vessel] use permit issued under this chapter shall notify the department in writing within seven days if:

(1) The [owner] permit holder no longer has possession of the vessel [;] authorized for use under the commercial use permit;

(2) All or any interest in [the] a vessel authorized for use under the commercial use permit is transferred to or assigned to another person(s) or business entity; [and] or

(3) The [owner's] permit holder's address or telephone number changes.

(b) "Transfer" as used in this section means any sale,

Assignment, lease of a vessel or the change in ownership or transfer of stock in a corporate owner which results in a change of the majority stockholder, or the transfer of

interest in any other business entity which results in a

change of the owner holding the majority interest.

(c) "Interest" as used in this section includes any claim

of right, title, ownership of stock, shares, profit, benefit or gain in a corporation, partnership, joint venture or any other business entity that has a commercial vessel permit issued under this

subchapter. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

53. Section 13-256-36 Hawaii Administrative Rules, is repealed:

[§13-256-36 Commercial Vessels

Use of commercial vessels at the Hanalei River Mouth and Anini Beach launching ramp. In addition to any federal, state or county law, rule, or ordinance, the following restrictions shall apply at the Hanalei River Mouth and Anini Beach launching ramp.

(1) No commercial vessel shall operate at or use the Hanalei River mouth or Anini Beach launching ramp for any commercial purposes without a commercial use permit.

(2) No commercial use permits shall be issued for commercial vessels to operate at or on the Hanalei River or Hanalei Bay ocean waters, except that up to two commercial use permits may be issued for kayaks to operate on the Hanalei River or Hanalei Bay ocean waters. No more than twenty-four passengers shall be allowed per day under each permit. A kayak tour group shall not exceed six vessels for passengers, and shall additionally include at least one guide vessel per six passengers.

(3) No more than two commercial use permits shall be issued for the Anini Beach launching ramp.

(4) No more than three commercial kayak tour operators shall be registered and permitted to operate in the Na Pali Coast restricted area. No trip scheduled by a commercial kayak tour operator may include more than four kayaks for customers and two kayaks for guides. No commercial kayak tour operation shall conduct more than two trips per day.

(5) Commercial vessels shall land at times designated by the department.

(6) No commercial vessel shall carry more than thirty paying or non-paying passengers per day.

(7) No commercial vessel shall be issued a commercial use permit to operate within the North Shore Kauai Ocean Recreation Management Area if its passenger carrying capacity exceeds twenty-five individuals.

(8) The department may authorize a holder of an existing commercial use permit to substitute a larger vessel for a smaller vessel so long as the new vessel does not exceed the twenty-five person carrying capacity limit, nor the thirty passengers per day limitation. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3,

200-4)]

54. Section 13-256-37 Hawaii Administrative Rules, is amended to read as follows:

§13-256-37 [Fees] Registration and Commercial use permit fees

[(a)] Fees required to be paid to the department are described in [Chapter] chapter 13-234 and more specifically as follows:

(1) Registration fee. [A] The registration fee payable at the time of issuance shall be [prescribed in section 13-253-1] in accordance with Hawaii Revised Statutes, section 200-32.

[(2)] Operator license fee. A commercial operator license fee payable at time of issuance of the license shall be \$2.00.

(3)](2) Commercial [vessel] use permit fee. A monthly

commercial [vessel] use permit fee shall be the greater

of [\$75.00] \$200.00 or [two per cent] three percent of the monthly gross receipts.

[(b)](c) Delinquency in excess of thirty days in payment of any fees owed to the department [will] shall result in automatic suspension of the commercial use permit, and delinquency in excess of sixty days shall result in automatic [revocation] expiration of the commercial [vessel] use permit. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4)(Imp: HRS §§200-2, 200-3, 200-4)

55. Section 13-256-38 Hawaii Administrative Rules, is amended to read as follows:

§13-256-38 Anini Beach ocean waters.

(a) Anini Beach ocean waters means the area confined by the boundaries shown on Exhibit "B", dated September 19, 1988, located at the end of this subchapter and described as follows:

Beginning at a point at the low watermark from Honono

Point, thence along a straight line on an azimuth of 142 degrees measured from true south to the inner edge of the reef of the channel, thence clockwise along the outer edge of the reef to the intersection of a line drawn on an azimuth of 197 degrees from a point on the shoreline, then

017 degrees to the low water mark of the shoreline, then in a northerly direction along the Anini Beach shoreline to the point of beginning.

(b) [Restrictions.] Anini Beach ocean waters [.] commercial activities. In addition to section 13-256-32 and all federal, state, and county law, rule or ordinance, the following shall apply for commercial activities in or on Anini ocean waters. No commercial activities, including tours, instructions, equipment rentals or solicitations shall be conducted at the Anini Beach launching ramp, in the Anini Beach ocean waters or on the state jurisdictional beaches and land adjacent thereto, other than those commercial activities explicitly stated below, for which a commercial use permit is issued by the department shall be required. Such permits may not be issued unless the applicant has first obtained all required SMA use permits and other county permits and complied with the conditions therein. No commercial vessel shall operate in the Anini Beach ocean waters or use the Anini Beach launching ramp for any commercial purpose without a commercial use permit.

(1) [Anini Beach ocean waters shall be limited to providing commercial sailboard instruction only. No more than sixteen commercially owned sailboards may be employed in instructional use at any one time] A maximum of two commercial use permits may be issued for the Anini Beach launch ramp. The maximum authorized United States Coast Guard passenger carrying capacity for vessel shall not exceed sixteen passengers. The maximum number of passengers per day shall not exceed thirty paying or non-paying passengers.

(2) Motorized vessels operating within Anini Beach ocean waters shall not exceed a speed of "slow-no- wake" [(five miles per hour)] within two hundred feet of the shoreline.

(3) [Motorized vessels] Vessels and sailboards shall not proceed within one hundred feet of persons engaged in fishing. This restriction shall apply to vessels transiting the channel to or from the launching ramp.

(4) A maximum of two commercial use permits for commercial sailboard/stand-up paddle board instruction may be issued for Anini ocean waters, no more than eight sailboards/stand-up paddle boards per permit shall be allowed within the Anini ocean waters at any one time. Instructors shall have a minimum of three (3) years of surfboard or sailboard riding experience, possesses a Red Cross advanced life saving certificate, knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's examination made no earlier than thirty (30) days prior to applying for the permit.

(c) Swimming Zone A, Anini Beach ocean waters.

(1) Swimming Zone A, Anini Beach ocean waters means the ocean waters confined by the boundaries shown on Exhibit "B", dated September 19, 1988, located at the end of this subchapter and described as follows:

Beginning at a point on the low water mark seventy-five feet east of the launching ramp, then proceeding in a straight line perpendicular to the low water mark seaward for a distance of one hundred feet, then proceeding in a straight line to a point on the extended eastern property line of

Anini Beach Park located one hundred feet from the low water mark, then along the extended property line to the low water mark, then along the low water mark to the point of beginning.

(d) Swimming Zone B, Anini Beach ocean waters.

(1) Swimming Zone B, Anini Beach ocean waters means the ocean waters confined by the boundaries shown on Exhibit "B", dated September 19, 1988, located at the end of this subchapter and described as follows:

Beginning at a point on the low water mark on an azimuth measured clockwise from True South of 167 degrees from Honu Point, proceeding in a straight line for a distance of one hundred feet, then proceeding in a straight line to the extended western property line of Anini Beach Park located at a point in the water one hundred feet from the low water mark, then along the extended property line to the low water mark, then along the low water mark to the point of beginning.

(e) Restrictions. Swimming Zones A and B of Anini Beach ocean waters are designated for swimming and bathing. No person shall operate or moor a vessel or sailboard within these zones. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

56. Section 13-256-39 Hawaii Administrative Rules, is amended to read as follows:

§13-256-39 Hanalei Bay Ocean waters, general restrictions.

(a) Hanalei Bay ocean waters means all ocean waters and navigable streams confined by the boundaries shown on Exhibit "C" dated September 19, 1988, located at the end of this subchapter and described as follows:

Beginning at a point on the shoreline at the northernmost tip of Makahoa Point on the western end of the bay, thence along a straight line drawn tangent to the shoreline of Puu Poa Point on the eastern end of the bay, thence clockwise along the shoreline, including the banks of all navigable streams to the upper limit of tidal influence, to the point of beginning.

(b) [The Hanalei Bay ocean waters are subject to the following restrictions] In addition to all federal, state and county laws, rules and ordinances, the following restrictions shall apply to all activities in Hanalei Bay ocean waters.

(1) No commercial activities, including tours, instruction, equipment rentals or solicitations, shall be conducted in Hanalei Bay ocean waters or on the state jurisdictional beaches and lands adjacent thereto, other than those commercial activities explicitly stated below, for which a commercial use permit issued by the department shall be required. Such permit may not be

issued unless the applicant has first obtained all required Special Management Area use permits and other county permits and complied with the conditions therein.

(2) No commercial vessel shall operate in Hanalei Bay ocean waters for any commercial purposes without a commercial use permit.

(A) Other than as specified in paragraphs (B) and (C) below, no more than three commercial use permits may be issued for vessels to conduct commercial activities in, from, or to Hanalei Bay ocean waters. The maximum authorized United States Coast Guard passenger carrying capacity for a commercial vessel shall not exceed twenty-five, and no more than thirty paying or non-paying passengers shall be allowed per day under each permit. Loading and unloading of passengers shall be conducted in conformance with the requirements of any county issued permits

(B) No more than one commercial use permit may be issued for a non-motorized sailing canoe to conduct commercial activities in Hanalei Bay ocean waters with loading and unloading of passengers to occur from the Princeville Hotel Beach. The maximum carrying capacity of such non-motorized sailing canoe shall not exceed six passengers, and no more than twenty-four paying or non-paying passengers shall be allowed per day under such permit.

(C) A maximum of two commercial use permits may be issued for guided kayak tours in Hanalei Bay ocean waters. The maximum number of passenger kayaks per trip shall not exceed eight. At least one guided shall be required for each group of up to eight passenger-occupied kayaks, and no more than thirty passengers shall be allowed per day under each permit.

(D) The department **may** issue up to eight (8) surf-school permits, with no more than four students to one instructor in the water at one time. The instructor shall have a minimum of three (3) years of surf-board riding experience, possesses a current Red Cross advanced life saving certificate, knows elementary first aid and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's examination made no earlier than thirty (30) days prior to applying for the permit.

[(1)] 3 No person shall operate a vessel at a speed in excess of "slow-no-wake" [(five miles per hour)] within five hundred feet of the shoreline, within the ingress/egress lanes, on the entire length of the Hanalei River, or within the designated mooring area.

[(2)] 4 No person shall navigate a motorboat within [three] five hundred feet of a [shoreline,] diver's flag, [or] a designated swimming area, or a shoreline, except within the designated ingress/egress lanes or on the Hanalei River. [No person shall navigate a commercial motorboat within five-hundred feet of the shoreline, except within the designated ingress/egress corridors.] Vessels engaged in non-commercial fishing are exempt from the [three] five-hundred foot shoreline restriction, except that they may not enter designated swimming areas.

[(3)] 5 No person shall anchor or moor a vessel, raft, barge, platform or other contrivance except within the designated mooring area.

[(4)] 6 No commercial fishing vessel over [fifty] thirty feet in length may engage in fishing except by pole and line within Hanalei Bay ocean waters.

(c) Recreational Zone A, Hanalei Bay ocean waters.

(1) Recreational Zone A means the ocean waters confined by the boundaries shown on Exhibit "C" dated September 19, 1988, located at the end of this subchapter and described as follows:

All ocean waters and navigable streams located mauka of a straight line drawn from the end of Hanalei Pier to Makahoa Point.

(2) Restrictions. Zone A Hanalei Bay ocean waters is designated for recreation use. Unless permitted, no commercial vessel, sailboard, surfboard or other commercial water recreational device may be navigated within Zone A, provided that commercial vessels may be moored within that portion of the designated mooring area located within Zone A.

(d) [Swimming] Recreational Zones B-1 and B-2, Hanalei Bay Ocean waters.

(1) Zones B-1 and B-2 mean the areas confined by the boundaries shown and described in Exhibit "C" dated

September 19, 1988, located at the end of this subchapter, as follows:

[Zone B-1 shall be established only when a sand beach of a minimum width of two feet at high tide is present fronting Black Pot Beach Park.]

Zone B-1 [swimming] recreational area extends three hundred feet seaward of the low water mark for a distance of three hundred feet on each side of Hanalei Pier.

Zone B-2 [swimming] recreational area extends three hundred feet seaward of the low water mark between the extended boundary lines of the county park containing the beach pavilion.

(2) Restriction. Zones B-1 and B-2 are designated for [bathing and swimming] recreational, non-commercial use only. No person shall operate or moor a vessel, [sailboard,] or any [other recreation] commercial device within Zones B-1 and B-2, provided that this restriction shall not apply to:

(A) Non-commercial non-motorized vessels engaged in small-scale surround net fishing or fishing and crabbing from shore;

(B) Non-commercial Hawaiian design outrigger canoes.

(e) The designated mooring area for the mooring or anchoring of [transient and locally based vessels] vessels, rafts, barges, platforms and other contrivances, is the area encompassed by the boundaries shown on Exhibit "C" dated September 19, 1988, located at the end of this subchapter, and which are described as follows:

Beginning at a point on the northwest corner of Hanalei

Pier by azimuths clockwise from True South, 123 degrees for a distance of six hundred seventy-five feet; 346 degrees for a distance of one thousand two hundred seventy-seven feet; 022

degrees for a distance of seven hundred fifty-six feet; 127 degrees for a distance of three thousand two hundred twenty-five feet; then on a straight line to the point of beginning.

[(2)] 1 All vessels, rafts, barges, platforms and other contrivances within Hanalei Bay ocean waters shall be moored or anchored solely within the designated mooring area.

[(3)] 2 No person shall navigate, moor, or anchor a commercial vessel, providing services on a fee basis, in a designated mooring area unless the vessel has been registered and the owner has a valid commercial use permit issued by the department.

[(4)] 3 No person shall anchor, moor or stay aboard a vessel except those equipped with an approved marine sanitation device (MSD) in good working condition, or those vessels exempt from MSD requirement in accordance with U.S. Coast Guard regulations.

[(5)] 4 No permanent mooring shall be installed within the designated mooring area except by permit issued by the department. Prior to installation.

(f) Ingress/Egress [zones] lanes.

(1) [Ingress/Egress zones shall be established at intervals along the shoreline to provide beach access for all motorized vessels and non-motorized dinghies and tenders from transient and visiting vessels anchored or moored within the designated mooring area] Vessels shall access the beach solely through the following Ingress/Egress lanes. [Zone] Lane number one begins at the southern boundary of the County Park pavilion parcel and extends southwest along the shoreline a distance of three hundred feet, then seaward to the designated mooring area. Zone number two begins at the north bank of Hanalei River and extends southward across the Hanalei River mouth to the northern boundary of Black Pot Park, and then extends seaward to the designated mooring area.

(2) [Zone] Lane number one is designated for use by recreational motorized vessels, sailing catamarans and dinghies used as tenders for transient recreational vessels.

(3) [Zone] Lane number two is designated for use by both commercial and recreational vessels.

[Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4)

(Imp: HRS §§200-2, 200-3, 200-4)

57. Chapter 13-256 Hawaii Administrative Rules, is amended to read as follows by adding a new subsection 13-256-42 to read as follows:

§13-256-42 Ke'e Beach/lagoon ocean waters, general restrictions.

(a) The Ke'e beach/lagoon ocean waters are for recreational use only, and are subject to the following restrictions. This section shall not apply in the event of an emergency, to law enforcement or to rescue craft.

- (1) Motorized vessels are prohibited within the Ke'e beach/lagoon ocean waters, unless engaged in small scale surround net fishing.
- (2) Non-motorized vessels shall maintain a safe distance from all swimmers.

[Eff 3/1/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

58. Section 13-256-50 Hawaii Administrative Rules, is amended to read as follows:

§13-256-50 Definition.

The "South Shore Kauai Ocean Recreation Management Area" means all ocean waters and navigable streams from the north boundary of Hanamaulu Bay to the west boundary of Salt Pond Beach Park, Hanapepe, Kauai Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "G", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2,200-3, 200-4)

59. Section 13-256-51 Hawaii Administrative Rules, is amended to read as follows:

§13-256-51 Hanamaulu Bay restricted zones.

(a) Zone A, Hanamaulu Bay.

(1) Zone A, Hanamaulu Bay means the ocean waters confined by the boundaries for said zones as shown on Exhibit "H", dated August 20, 1988, and located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point on the low water mark at the tip of land which is six hundred feet from the mouth of the Hanamaulu Stream, then by azimuth measured clockwise from True South; 180 degrees to a point on the low water mark of the northern boundary of Hanamaulu Bay; thence along the low water mark of the bay to the point beginning.

(2) Restrictions. Zone A, Hanamaulu Bay is designated for swimming and bathing. No person shall operate or moor a vessel or sailboard within Zone A.

(b) Zone B, Hanamaulu Bay.

(1) Zone B, Hanamaulu Bay means the ocean waters confined by the boundaries for said zones as shown on Exhibit "H",

256-31 §13-256-51 dated August 20, 1988, located at the end of this subchapter.

The boundaries of Zone B are as follows:

Beginning at a point on the low water mark on the northern tip of Ahukini State Park; [thence] then by azimuth measured clockwise from True South; 170 degrees to a point on the low water mark on the shoreline; then westward along the low water mark to the northern boundary of Zone A; then southward along the boundary of Zone A to the low water mark on the shoreline; then eastward along the low water mark to the point of beginning.

(2) Restrictions. Zone B, Hanamaulu Bay is designated as a "slow-no-wake" zone. All watercraft within this zone shall not exceed a speed of slow-no-wake.

(c) Hanamaulu Bay Ingress-Egress Corridor.

(1) Zone C, Hanamaulu Bay Ingress-Egress Corridor means the ocean waters confined by the boundaries for said corridor as shown on Exhibit "H", dated August 20, 1988, located at the end of this subchapter. The boundaries of Zone C are as follows:

Beginning at a point on the low water mark at the south opening of Hanamaulu Stream; [thence] then by azimuth measured clockwise from True South; 240 degrees to a point on at the west boundary of Zone B and the low water mark on the shoreline; then along western boundary of Zone B for a distance of one hundred feet; then 063 degrees to a point at the low water mark of the Hanamaulu Beach; the along the low water mark of the shoreline to the point of beginning.

(2) Restrictions. Zone C, Hanamaulu Bay Ingress- Egress Corridor is designated for use by recreational motorized vessels. All watercraft within this zone shall not exceed a speed of slow-no-wake. [Eff 2/24/94] (Auth: HRS §§200-

2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

60. Section 13-256-52 Hawaii Administrative Rules, is amended to read as follows:

§13-256-52 Nawiliwili Bay restricted zones.

(a) Zone A, Nawiliwili Bay is the ocean waters encompassed by the boundaries of the zones as shown on Exhibit "I", dated November 23, 1988 located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point at the low water mark on the southern tip of Kukii Point then by azimuths measured clockwise from True South; 090 degrees across the bay to a point on the jetty; then proceeding north along the low water mark along the shoreline of Kalapaki Bay to the point of beginning.

Zone A, Nawiliwili Bay is designated for general ocean recreation activities. No person shall moor a vessel or operate at a speed in excess of slow no wake within Zone A. A maximum of two permits may be issued for surf-schools. The ratio of for instructor to students shall not exceed one instructor to four students. Each surf-school shall not exceed four students to one instructor in the water at one time. Instructors shall have a minimum of three (3) years surfboard riding experience, possesses a Red Cross advanced life saving certificate, knows elementary first aid, and is physically qualified to perform the duties the position requires as evidenced by a written report of a physician's examination made no earlier than thirty (30) days prior to applying for the permit. [Eff 2/24/94] (Auth: HRS §§200-21, 200-22, 200-24) (Imp: HRS §§200-21, 200-22, 200-24)

61. Section 13-256-53 Hawaii Administrative Rules, is amended to read as follows:

§13-256-53 Nukumoi Restricted Zones.

(a) Nukumoi Swimming Zone

(1) Nukumoi swimming zone means the ocean waters confined by the boundaries for said zones as shown on Exhibit "J", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark on the southern tip of the Nukumoi Point, then proceeding on a straight line to the low water mark of the southern point of Kihouna Heiau, then along the low water mark of Nukumoi Beach in an easterly heading to the point of beginning.

(2) Restrictions. Nukumoi swimming zone is designated for swimming and bathing. No person shall operate or moor a vessel or other watercraft within this zone.

(b) Nukumoi ingress/egress Corridor.

(1) Nukumoi ingress/egress corridor means the ocean waters confined by the boundaries for said zones as shown on Exhibit "J", dated September 19, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark adjacent to the west side of the basalt rock on Nukumoi Beach then by azimuth measured clockwise from True South, 018 degrees for a distance of three hundred feet and the swim zone boundary; 112 degrees for a distance of fifty feet; 198 degrees to the shoreline; then along the low water mark of Nukumoi Beach in an easterly direction to the point of beginning.

- (2) Restrictions. Nukumoi ingress/egress corridor is designated for the use of non-motorized vessels. No person shall operate or moor a motorized vessel within this zone.

[Eff Feb. 24, 1994] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS200-2, 200-3, 200-4).

62. Section 13-256-54 Hawaii Administrative Rules, is amended to read as follows:

§13-256-54 Koloa Landing restricted area.

(a) The Koloa Landing restricted area means the ocean waters confined by the boundaries for said zones as shown on Exhibit "K", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark at the southern tip of Lae O Kohala, thence by azimuth measured clockwise from True South; 130 degrees to a point on the low water mark at the western edge of Keawaloa Bay; then long the low water mark of the shoreline in a northerly direction and then on an easterly heading to the point of beginning.

- (1) (b) Restrictions. Koloa Landing restricted area is designated for swimming and diving. No person shall operate or moor a vessel in this area, except that a vessel may enter or depart the area by a straight line from the boat launching area to the closest seaward boundary line. All vessels transiting the area shall not exceed a speed of slow-no-wake.
- (c) In addition to any federal, state or county law, rule, permit or ordinance requirements, a commercial activity/use permit shall be required to conduct commercial SCUBA or commercial snorkeling activities in this area by the department. The applicant for such a permit shall comply with the applicable provisions stated in the Hawaii Administrative Rules, and Ocean Waters, Navigable Streams and Beaches.

(d) A maximum of eighteen (18) commercial activity use permits may be issued. Permittees shall not exceed ten individuals in the water at any one time, including instructors/guides or assistants. Permittees conducting instructions or guided tours shall be required to make available to representatives of the department a copy of the activity/use permit upon demand. Commercial activity permittees shall make available to customers maps, or charts that show the boundaries of the area outlined restricted areas/zones and dangerous areas and conditions and shall establish an education program acceptable to the department address the historical, cultural, ecological significance of the area, and any rules or laws pertaining to protected species and marine resources conservation etiquette.

63. Section 13-256-55 Hawaii Administrative Rules, is amended to read as follows:

§13-256-55 Salt Pond Park restricted area.

(a) The Salt Pond Park restricted area means the ocean waters confined by the boundaries for said zones as shown on Exhibit "M", dated June 30, 1988, and located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark which is five hundred feet east of the centerline extension of Salt Pond Road; then on the low water mark along the beach in a southerly direction for a distance of approximately one thousand two hundred fifty feet; then on a straight line to the point of beginning.

(b) Restrictions. The Salt Pond Park restricted area is designated for swimming, [and bathing]. No person shall operate or moor a vessel within this area. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4).

64. Section 13-256-56 Hawaii Administrative Rules, is amended to read as follows:

§13-256-56 Wailua River restricted area.

(a) Restrictions in this section shall not apply to department vessels, department personnel or emergency, patrol or rescue craft while performing official duties.

(b) The Wailua River restricted area means the navigable waters of Wailua River, Kauai, as defined by the boundaries as shown on Exhibit "L", titled, "Island of Kauai, Wailua River Restricted Area," dated February 27, 1998, and located at the end of this subchapter. The boundaries begin at a point at the high water mark at the mouth of the

Wailua River and include all the navigable waters along the Wailua River in a westerly direction to the base of Kaholalele Falls on the north fork of the river and all the navigable waters to the base of the Wailua Falls on the south fork of the river.

(c) The Wailua River restricted area shall be divided into [four] five zones:

- (1) Zone 'A' includes all the navigable waters beginning fifty feet into the western side of the Wailua River bridge and from seventy-five feet into the Wailua River from the north shore to a point approximately eighteen hundred feet along the shoreline, then extends from the banks of the north shoreline approximately seven hundred and eighty-three yards upstream as indicated by the navigational aids on both sides of the river designating the boundary between Zones 'A' and 'B', as shown on Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone 'A'," dated February 27, 1998, and located at the end of this subchapter.
- (2) Zone 'B' includes all waters extending approximately two miles upstream from the navigational aids on both sides of the river designating the boundary between Zones 'A' and 'B' to the base of Kaholalele Falls on the north fork of the river and approximately three and a half miles from the navigational aids designating the boundary between Zones 'A' and 'B' to the base of the Wailua Falls on the south fork of the river as shown on Exhibit "L", titled "Island of Kauai, Wailua River Restricted Area," dated February 27, 1998, and located at the end of this subchapter.
- (3) Zone 'C' includes the waters beginning at the west side of the Wailua river bridge between the north and south banks and extends fifty feet into the river, then proceeds along the north shoreline to a point approximately eighteen hundred feet along the shoreline as shown on Exhibit "L", titled, "Island of Kauai, Wailua River Restricted Area, Zone 'A'," dated February 27, 1998, and located at the end of this subchapter.
- (4) Zone 'D' begins at the eastern boundary of Zone 'C' and extends under the Wailua River bridge between the north and south banks, extending to the shoreline.
- (5) Zone 'E' incorporates the Wailua Marina.

(d) General rules for Wailua River.

- (1) Only commercial and recreational vessels not exceeding twenty-one feet in length shall be allowed to utilize the Wailua River and shall be limited to:

- (A) Vessels used for water-skiing [;] and other recreational purposes.
- (B) Motorized vessels, excluding thrill craft; and wind powered vessels.
- (C) Manually propelled vessels.

- (2) Commercial barges, or vessels otherwise allowed by the department, shall be exempt from vessel length restrictions described in paragraph (1).
- (3) Recreational motorized vessels, and recreational and rented manually-propelled vessels may utilize Zones 'A', 'B' and 'C' as provided for in this section.
- (4) Zone 'C' shall be designated a slow-no-wake [swimming] zone indicated by marker Buoys. [Motorized vessels] Vessels [launching from launch ramp 'A'] shall proceed with caution while within Zone 'C'.
- (5) All manually-propelled vessels shall be required to operate along side the northern river bank.
- (6) All vessel operators shall possess a state park permit to embark or disembark along the shores only within the state park in Zone 'B'

(7) No "commercial kayak tour operations or commercial water-skiing"
Will not be permitted on Sundays, State and Federal holidays without the expressed written permission from the department.

(8) Private floating docks. Individuals possessing a floating dock prior to 1998 may retain their floating dock. Owners of floating docks are responsible for any incidents and/or accidents derived from the floating dock. The department assumes no responsibility for the floating docks installed by private owners. A written request shall be submitted to install a floating dock. Floating docks are not to exceed ten feet by twenty feet. Owners of floating docks shall be insured, naming the state as an additional insured. During flash flood advisory/warning no vessels shall be moored to the floating docks.

- (e) Commercial vessel activity requirements for Wailua River.
- (1) Unless otherwise provided by law, anyone conducting commercial activities on the Wailua River shall possess a valid commercial activity permit from the department.
- (2) All individuals possessing a commercial activity permit to utilize the Wailua River as of June 11, 1999, may retain the commercial activity permit on the effective dates of these rules.
- (3) All available commercial activity permits may be issued in accordance with section 13-231-60.
- (4) Re-issuance of commercial activity permits shall be in accordance with §13-231-61.
- (5) Commercial barges, or vessels otherwise allowed by the department, may only utilize Zones 'A' [and] 'B' and 'E'.

- (6) All commercial activity is prohibited from Zones 'C' and 'D'.
- (7) Commercial water-skiing commercial activity permittees shall abide by the requirements described in section (g).
- (8) Commercial Manually-propelled vessel commercial activity permittees shall abide by the requirements described in subsection (f).

(f) Commercial manually-propelled vessel requirements for the Wailua River.

- (1) Not more than fifteen manually-propelled vessel commercial activity permits, with a maximum of twelve vessels per commercial activity permit per day, [and with a maximum of four guides per permit,] may be issued for guided tours for the Wailua River.
- (2) Not more than four manually-propelled vessel commercial activity permits, with a maximum of six vessels per commercial activity permit, maybe issued for rented manually-propelled vessels for the Wailua River.
- (3) In addition to the provisions in subsection (e)(1), manually-propelled vessel commercial activity permittees utilizing the Wailua River shall abide by the following:

- (A) For guided tours, a minimum of one tour guide shall be required for each group of twelve people;
- (B) Tour guides shall be required to wear a bright orange shirt with the company name printed on the shirt when guiding tours; and
- (C) All commercial manually-propelled vessels permittees shall be provided a Wailua River restricted area decal for each commercial manually-propelled vessel and shall be required to display it on the bow of the vessel.

(g) Water-skiing activity requirements for the Wailua River.

- (1) Water-skiing may be conducted in Zone 'A' in an area designated by the department, as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone 'A', "dated February 27, 1998, and located at the end of this subchapter, and shall be prohibited in Zone 'C'.
- (2) Water-skiing may be conducted in Zone 'B' only between sunrise to 9:00a.m. and from 5:00 p.m. to sunset.
- (3) A maximum of [one] two commercial activity permits may be issued for water-skiing activities.
- (4) The vessel towing water skiers may tow not more than one person at any one time.
- (5) Water-skiing shall be conducted in accordance with section 13-244-18.

- (6) Water-skiing activities shall be exempt from the speed restrictions of section 13-244-9
- (7) Water-skiing vessel traffic patterns shall be in a counter clockwise direction.
- (8) Water-skiing tow ropes shall not exceed seventy-five feet in length
- (9) Vessels engaged in water-skiing activities shall not exceed a speed of thirty-six miles per hour.
- (10) The only water [water] towing apparatus allowed shall be those equipped with boots, straps, or a leash on the board or ski. As an exception, inflatable tube type devices and body boards with tether cords may be towed. These devices may only be towed within the lower boundaries of Zone 'A' limited at the top by the location of Opaekaa Bridge.

(h) Launch ramp restrictions.

- (1) All commercial vessels are prohibited from utilizing Launch ramp 'A', as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone 'A'," dated February 27, 1998, and located at the end of this subchapter.

(i) The eastern half of the Kumualii area, as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone 'A'," dated February 27, 1998, and located at the end of this subchapter, shall be used exclusively for the launching and recovery of Hawaiian outrigger canoes.

(j) The western half of the lower Kaumualii area, as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone 'A'," dated February 27, 1998, and located at the end of this subchapter, may be utilized by recreational vessels, other than Hawaiian outrigger canoes, allowed on Wailua river." [Eff 10/19/02] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

65. Section 13-256-57 Hawaii Administrative Rules, is amended to read as follows:

§13-256-57 Kihouna Bay.

Kihouna Bay is designated for general ocean recreation activities. No person shall moor a vessel or operate at a speed in excess of slow-no-wake while within Kihouna Bay. The maximum of five 5 surf-school permits may be issued with a ratio of four students to one instructor. Instructors shall have a minimum of three (3) years of surfboard riding experience, possesses a Red Cross advanced life saving certificate, knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's examination made no earlier than thirty (30) days prior to applying for the permit.

66. Section 13-256-72, Hawaii Administrative Rules, is amended to read as follows:

§13-256-72 Kualoa [Ocean Water Restricted Zones] waters restricted zones.

(a) Zone A Kualoa [Ocean Waters] waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “U”, “Kualoa, Oahu, Hawaii,” Date [June 30, 1988] September 8, 1998, incorporated herein, and located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning as a point [on the low water mark of the shoreline which is four hundred seventy-five feet south of the groin across from the sugar mill, then by azimuth measured clockwise from True South, 270 degrees for a distance of eight hundred ten feet; 360 degrees for a distance of five hundred twenty-five feet; 090 degrees to a point on the low water mark of the shoreline; then along the low water mark] at approximately 21° 31’ 16.6” N/ 157° 50’ 06.9” W, then going in an easterly direction to approximately 21° 31’ 16.6” N/ 157° 49’ 58.2” W, then going in an southerly direction to approximately 21° 31’ 11.5” N/ 157° 49’ 58.2” W, then going in a westerly direction to approximately 21° 31’ 11.5” N/ 157° 50’ 07.3” W, then to the point of beginning.

Zone A is designated as a commercial thrill craft zone for the Kualoa full service permit. [No] Not more than six rental thrill craft and one thrill craft used for safety and rescue purposes shall operate at any one time. No person shall operate or moor a vessel or sailboard in [this zone] Zone A when [in use] being used by commercial thrill craft. Commercial thrill craft shall be operated within Zone A only between the hours of 9:00 a.m. and 5:00 p.m., Mondays through [Fridays] Saturdays. No commercial thrill craft shall be operated within Zone A on [Saturdays,] Sundays [, and state] or federal holidays.

a. Zone B Kualoa [Ocean Waters] waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “U”, “Kualoa, Oahu, Hawaii,” dated [June 30, 1988] September 8, 1998, incorporated herein, and located at the end of the subchapter. The boundaries of Zone B are as follows:

Beginning at a point [on the low water mark of the shoreline which is two hundred feet north of the boundary of Kualoa Regional Park; then along low water mark of the shoreline in a northerly direction to a point marking to southwest point of Zone A; then by azimuth measured clockwise from True South, 270 degrees for a distance of eight hundred feet; 180 degrees for a distance of five hundred twenty-five feet; 270 degrees for a distance of three hundred sixty feet; 360 degrees for a distance of one thousand thirty-five feet;] at approximately 21° 31’ 16.6” N/ 157° 49’ 58.2” W, then in an easterly direction to approximately 21° 31’ 16.6” N/ 157° 49’ 56.0” W, then in an southerly direction to approximately 21° 31’ 06.4” N/ 157° 49’ 56.5” W, then in a westerly direction to approximately 21° 31’ 06.4” N/ 157° 50’ 07.5” W, then in a northerly direction to approximately 21° 31’ 11.5” N/ 157° 50’ 07.7” W, then in an easterly

direction to approximately 21° 31' 11.5" N/ 157° 49' 58.2" W, then in a northerly direction [then] by straight line to the point of beginning.

Zone B is designated as a non-exclusive commercial ocean water sports zone [for sailing, windsurfing and scuba diving]. High speed towing, water skiing, and water sledding shall be prohibited. [Vessels] All vessels transiting [this zone] Zone B shall proceed with extreme caution.

(c) All commercial ocean [recreation] use activities are prohibited within Kualoa [ocean] waters restricted zones [() A ()] and [() B ()] on Sundays [, effective January 1, 1991] and federal holidays." [Eff 2/24/94; am] (Auth: HRS §§200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-22, 200-23, 200-24, 200-37, 200-39)

67. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-72.1 to read as follows:

§13-256-72.1 Kualoa waters restricted zones permit.

(a) Not more than one Kualoa full service permit shall be issued for Kualoa waters restricted zones subject to the following conditions:

- (1) The number of thrill craft shall be in accordance with the limits authorized in section 13-256-72(a). The number and type of other vessels and equipment shall not exceed the number and type of vessel and equipment permitted by the department on the effective date of these rules;
- i. All thrill craft and other operational vessels and equipment shall be registered in accordance with section 13-256-4 (a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal;
- ii. Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit a vessel substitution with a similar length vessel; provided that the increase is not greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited;
- (4) The maximum number of customers per day may be established through the conservation district use permit application process, but shall not exceed one-hundred and fifty customers;
- (5) Water sledding, water skiing, and high speed towing shall be prohibited;

- (6) The permittee shall maintain a daily log of the number of customers serviced by thrill craft and shall present the logs to division of boating and ocean recreation for review and inspection upon request; and
- (7) Educational and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.
- (b) All associated commercial operational and supporting activities shall be conducted from land in accordance with all applicable land use laws and zoning ordinances.
- (c) Any vessel with an authorized carrying capacity of more than six passengers with installed toilet facilities shall be equipped with a United States Coast Guard approved marine sanitation device.
- (d) Any transfer by the permittee or any transfer or combination of transfers of a majority interest or greater by the owners or shareholders of record of a business entity holding a permit shall automatically void the use of thrill craft and the permit shall revert to a large snorkel tour permit as found in section 13-256-73.5, unless the transfer is to a family member.
- (e) Any transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a large snorkel tour.
- (f) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of commercial operation.

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

68. Section 13-256-73, Hawaii Administrative Rules, is amended to read as follows:

13-256-73 Kaneohe Bay [Waters] ocean waters. (a) Kaneohe Bay ocean waters means the area encompassed by the boundaries shown on Exhibit “V”, “Kaneohe Bay [Waters Boundary & Commercial High Speed Boating Zone], Oahu, Hawaii.” dated [May 15, 1990] April 16, 2001, incorporated herein, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the northern point on the shoreline of Mokapu Point, located at approximately 21° 27’ 33.6” N/ 157° 43’ 21.6” W, then [by azimuth measured clockwise from

True South, 127 degrees for a distance of fifty thousand nine hundred and twenty-five feet] in a straight line to Makahonu Point, located at approximately 21° 32' 33.6" N/ 157° 50' 34.2" W, then along the shoreline of Kaneohe Bay to the point of beginning.

[(b) Commercial ocean recreation activities shall be restricted within Kaneohe bay waters as follows:

- (1) No commercial operator, holding a valid ocean recreational management area commercial use permit, shall operate a thrill craft, engage in water sledding or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding during weekends and state or federal holidays.

(2)]

- (b) All commercial ocean [recreation] use activities in Kaneohe Bay ocean waters are prohibited on [Sunday, effective January 1, 1991] Sundays and federal holidays.

(c) There shall be no walking on, no sitting, no standing, no anchoring on live coral or otherwise damaging the reef within Kaneohe Bay ocean waters.

[(c)] (d) Zone A Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit ["W"] "X", "Kaneohe, Oahu, Hawaii," dated [October 24, 1990] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone A are [described] as follows:

[Beginning at a point in the water by azimuth measured clockwise from True South, 234.5 degrees for a distance of three thousand nine hundred feet from the Sampan Channel front navigational range light; then on a radius of two hundred feet around that point.] Zone A is a circle with a radius of two hundred feet with its center at approximately 21° 26' 27.5" N/ 157° 47' 45.5" W.

[(d)] (e) Zone B Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit ["W"] "X", "Kaneohe, Oahu, Hawaii," dated [October 24, 1990] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone B are as follows:

[Beginning at a point in the water, by azimuth measured clockwise from True South, 200 degrees for a distance of five thousand two hundred eighty feet from a point on the low water mark on the northern tip of Kealohi Point; then on a radius of two hundred feet around that point.] Zone B is circle with a radius of two hundred feet with its center at approximately 21° 27' 28.5" N/ 157° 48' 08.5" W.

[(e)] (f) Zone C restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit ["W"] "X", "Kaneohe, Oahu, Hawaii," dated [October 24, 1990] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone C are as follows:

[Beginning at a point in the water, by azimuth measured clockwise from True South, 194 degrees for a distance of five thousand four hundred ninety feet from a point on the low water mark on the northern tip of Kealohi Point; then on a radius of two hundred feet around that point.] Zone C is a circle with a radius of two hundred feet with its center at approximately 21° 27' 32" N/ 157° 48' 13.5" W.

[(f) Zone D Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on exhibit "W", dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone D are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, 187 degrees for a distance of five thousand seven hundred thirty feet from a point on the low water mark on the northern tip of Kealohi Point; then on a radius of two hundred feet around that point.]

(g) Zones A, B, and C are subject to the following:

- (1) Zones A, B, and C [, and D] are designated as commercial thrill craft zones where full service permittees shall be required to operate. [No] Not more than six rental thrill craft shall operate within each [zone] of the zones A and B at any one time. No more than three rental thrill craft shall operate within zone C at any one time. [No person shall operate or moor a vessel or sailboard in these zones.] Zone A may be referred to as the Checker Reef commercial thrill craft zone. Zones B and C may be referred to as the commercial thrill craft sand flat zones.
- (2) Commercial thrill craft shall be operated in a clockwise direction only within zones A, B, and C [, and D] only between the hours of 9:00 a.m. and 5:00 p.m., Mondays through [Fridays] Saturdays. No commercial thrill craft shall be operated within Zones A, B, or C [, and D] on [Saturdays,] Sundays[, and state] or federal holidays.

[(g) Zone E Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "V-1", dated October 24, 1990, ,and located at the end of this subchapter. The boundaries of Zone E are as follows:

Beginning at a point in the water which is located by azimuth measured clockwise from True south, 219 degrees for a distance of three thousand four hundred eighty feet from the low water mark on the northern tip of Wailau Point "Kahaluu Landing"; then 300 degrees for a distance of five thousand two hundred eighty feet; 026 degrees for a distance of eight hundred forty feet; 032 degrees for a distance of five hundred forty feet; 120 degrees for a distance of one thousand six hundred twenty feet; then by a straight line to the point of beginning.:]

(h) Zone D Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “W”, “Kaneohe, Oahu, Hawaii,” dated September 25, 2000, and located at the end of this subchapter. The boundaries of Zone D are as follows:

Zone D is rectangular in shape which borders the Kaneohe Bay entrance channel day beacon 11 beginning at a point in the water which is located at approximately 21° 28’ 32” N / 157° 49’ 39” W, then by a straight line in a due East (true) direction to approximately 21° 28’ 32” N / 157° 49’ 32” W, then in a straight line to approximately 21° 28’ 10.5” N / 157° 49’ 27” W, then in a straight line due West (true) to approximately 21° 28’ 10.5” N / 157° 49’ 34” W, then in a straight line back to beginning.

[h] Zone [E] D is restricted to commercial SCUBA, snorkeling and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Activity shall take place only near the reef, not on the reef. Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.

(i) Zone F Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “W”, October 24, 1990, and located at the end of this subchapter.

The boundaries of Zone F are as follows:

Beginning at a point in the water which is located by azimuth measured clockwise from True South, 182 degrees for a distance of four thousand two hundred sixty feet from the North tip of the pier at Heeia Kea Small Boat Harbor; then 120 degrees for a distance of one thousand nine hundred fifty feet; 212 degrees for a distance of five hundred forty feet; 206 degrees for a distance of eight hundred forty feet; 314 degrees for a distance of one thousand two hundred feet; then by a straight line to the point of beginning.]

(i) Zone E Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “X”, “Kaneohe, Oahu, Hawaii,” dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone E are as follows:

Zone E is a circle with a radius of three hundred ten yards with its center located at approximately 21° 27’ 25” N / 157° 47’ 46.5” W. Zone E is restricted to SCUBA, snorkeling, underwater activities, and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral.

Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.

(j) Zone [G] F Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on exhibit "X", "Kaneohe Bay, Oahu, Hawaii," dated [October 24, 1990,] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone [G] F are as follows:

Beginning at a point in the water which is located [by azimuth measured clockwise from True South, 213 degrees for a distance of three thousand eight hundred ten feet from the north tip of the pier at Heeia Kea Small Boat Harbor; then 120 degrees for a distance of one thousand six hundred eighty feet; 211 degrees for a distance of seven hundred twenty feet; 301 degrees for a distance of one thousand six hundred sixty-five feet;] at approximately 21° 26' 50" N / 157° 47' 45" W, then by a straight line to approximately 21° 26' 23.5" N / 157° 47' 25" W, then by a straight line to approximately 21° 26' 16" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 20.5" N / 157° 47' 59.3" W, then by a straight line to approximately 21° 26' 28.5" N / 157° 48' 09" W, then [by] in a straight line to the point of beginning.

Zone F is designated as non-exclusive commercial ocean water sports zone. All vessels entering this zone shall exercise extreme caution while it is being utilized for commercial ocean water sports activities. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. All activity on top of Checker Reef in Zone F is prohibited.

(k) Zone G Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone G are as follows:

Beginning at a point in the water which is located at approximately 21° 26' 25" N / 157° 47' 49" W, then by a straight line to approximately 21° 26' 22" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 16.5" N / 157° 47' 36" W, then by a straight line to approximately 21° 26' 19" N / 157° 47' 51" W, then by a straight line to the point of beginning. Zone G is designated as non-exclusive commercial water ski and water sledding zone.

Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes shall be restricted to this zone. No more than one commercial vessel for water sledding shall be permitted to tow at any speed within this zone at any one time for safety purposes. Commercial large full service permittees and non-commercial

recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor or anchor a vessel within this zone. High speed operations shall take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

[(k) Zones F and G are designated as commercial and recreational water ski and water sledding zones. All water skiing and water sledding and the operation of towed devices used to carry passengers for both commercial and recreational purposes west of the Sampan Channel is restricted to these zones. No more than four commercial operating area use permits for water sledding shall be permitted in Zone F or G for safety purposes. No Person shall moor a vessel within these zones.

(l) Zone H restricted zone is the area encompassed by the boundaries show on Exhibit “V-1”, dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone H are as follows:

Beginning at a point in the water which is located by azimuth measure clockwise from True South, 219 degrees for a distance of three thousand four hundred eighty feet from the low water mark on the tip of Wailau Point “Kahaluu Landing”; Then 168 degrees for a distance of three thousand five hundred seventy feet; 270 degrees for a distance of one thousand three hundred twenty feet; 311 degrees for a distance of nine thousand feet; 039 degrees for a distance of one thousand two hundred seventy-five feet; 012 degrees for a distance of one thousand fifty feet; 031 degrees for a distance of seven hundred twenty feet; 120 degrees for a distance of five hundred ten feet; 173 degrees for a distance of one thousand three hundred sixty-five feet; 134 degrees for a distance of hone thousand two hundred feet; then by a straight line to the point of beginning.

(m) Zone H-1 restricted zone is the area encompassed by the boundaries shown on Exhibit “W”, dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone H-1 are as follows:

Beginning at a point in the water which is located by azimuths measure clockwise from True South, 206.5 degrees for a distance of six thousand five hundred ten feet from a point on the low water mark on the northern tip of the Kealohi Point; then 210 degrees for a distance of two thousand seven hundred seventy-five feet; 227 degrees for a distance of two thousand seven hundred seventy-five feet; 039 degrees for a distance of one thousand fifty feet; then in a straight line to the point of beginning.

No person shall operate a vessel within Zones H and H-1 at a speed in excess of slow-no-wake. Recreational thrill craft and water ski and water sledding activities are prohibited. Commercial vessels and activities are prohibited, except for commercial fishing vessels engaged in baiting operations.

(n) (l) [Kaneohe Bay recreational thrill craft zone is the area seaward of the boundaries of Zones “H”, “H1” and “I” shown on Exhibit “X”, dated October 24, 1990, and located at the end of the subchapter. The boundaries are as follows:

Beginning at a point in the water immediately south of buoy “3”, which marks the southeast boundary of the northern shipping channel in Kaneohe Bay; then in southerly direction along the eastern boundary of the channel to the intersection of the Sampan Channel at buoy “10”, except where zoned for other activity; then in a northeast direction along the northwestern boundary of the Sampan Channel to buoy R-2; then on a straight line to the point of beginning. The Kaneohe Bay recreational thrill craft zone is designated for recreational thrill craft.] Recreational thrill craft shall not be operated in any [other] area of Kaneohe Bay [.] except in the designated recreational thrill craft zone as described in section 13-256-77. Recreational thrill craft shall access the recreational thrill craft zone by transiting from Heeia Kea small boat harbor directly to the Sampan channel to the Kaneohe recreational thrill craft zone as described in section 13-256-77.

[(o) Zone I restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “W”, dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone I are as follows:

Beginning at a point in the water which is located by azimuths measured clockwise from True South, 213 degrees for a distance of three thousand eight hundred then feet from the north tip of the pier at Heeia Kea Small Boat harbor; then 210 degrees for a distance of six hundred seventy-five feet; 121 degrees for a distance of one thousand six hundred sixty-five feet; 192 degrees for a distance of one thousand fifty feet; 219 degrees for a distance of one thousand two hundred seventy-five feet; 311 degrees for a distance of five thousand eight hundred twenty feet; 037 degrees for a distance of one thousand nine hundred fifty feet; then by a straight line to the point of beginning.]

(m) Zone H restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “X”, “Kaneohe, Oahu, Hawaii,” dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone H are as follows:

Beginning at a point in the water which is located at approximately 21° 27’ 32.5” N / 157° 48’ 19.5” W, then by a straight line to approximately 21° 27’ 26.5” N / 157° 48’ 10” W, then by a straight line to approximately 21° 27’ 14.5” N / 157° 48’ 17” W, then by a straight line to approximately 21° 27’ 20” N / 157° 48’ 27” W, then in a straight line to the point of beginning. Zone H is designated as non-exclusive commercial water ski and water sledding zone.

Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes are restricted to this zone. No more than two commercial vessels for water sledding shall be permitted to tow at high speed within this zone at any one time for safety purposes. Commercial full service permittees and non-commercial recreational

users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor a vessel within this zone. High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

(n) Zone I restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “X”, “Kaneohe, Oahu, Hawaii,” dated September 25, 2000, incorporated herein, and located at the end of this subchapter.

The boundaries of Zone I are as follows: Beginning at a point in the water located at approximately 21° 27’ 41” N / 157° 48’ 18” W, then by a line parallel to the edge of the sand flat to approximately 21° 27’ 32” N / 157° 48’ 02” W, then by a straight line to approximately 21° 27’ 25” N / 157° 48’ 07” W, then by a straight line to approximately 21° 27’ 34” N / 157° 48’ 22.5” W, then by a straight line to the point of beginning.

Zone I is designated as non-exclusive commercial ocean water sports zone. Other vessels entering this zone shall exercise extreme caution while it is being used for commercial ocean water sports activities. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest. Commercial operators whose passengers do not operate thrill craft must keep their passengers out of Thrill Craft Zones B and C. Vessels operating in Zone I shall maintain a watch for sea turtles , which may mitigate to the north central part of the zone, and exercise care to stay clear of any turtle observed.

[(p) Zone J restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “W”, dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone J are as follows:

Beginning at a point in the water which is located by azimuths measured clockwise from True south, 235 degrees for a distance of two thousand five hundred eighty feet from the front Sampan Channel navigational range light; then 114 degrees for a distance of one thousand two hundred thirty feet; 218 degrees for a distance of one thousand eight hundred feet; 287 degrees for a distance of one thousand six hundred ninety-five feet; 006 degrees

for a distance of one thousand eighty feet; then by a straight line to the point of beginning.

(q) Zones I and J are designated as ocean water sports zones. Other vessels entering these zones shall exercise extreme caution while they are being utilized for commercial ocean water sports activities. Vessels operating in Zone I shall maintain a watch for sea turtles which may migrate to the north central part of the zone, and exercise care to stay clear of any turtles observed.

(r) Zone J-1 Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “W”, dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone J-1 are as follows:

Beginning at a point in the water by azimuths measured clockwise from True South, 206 degrees for a distance of two thousand two hundred fifty feet from Sampan Channel

front navigational range light; then 114 degrees for a distance of two hundred twenty-five feet; 180 degrees for a distance of three hundred seventy-five feet; 218 degrees for a distance of one thousand four hundred forty feet; 287 degrees for a distance of four hundred fifty feet; then in a straight line to point of beginning.

(s) Zone J-1 is designated as commercial water ski and water sledding zones. All water skiing and water sledding and the operation of towed devices used to carry passengers for both commercial and recreational purposes is restricted to this zone. Only one commercial operating area use permit for water sledding shall be permitted within this zone for safety purposes. No person shall moor a vessel within this zone.

(t) (o) Kaneohe Bay [channel] speed restrictions. [Notwithstanding any rule to the contrary, the speed of any watercraft shall not exceed 15 knots when within the confines of the Kaneohe Bay channel as shown on Exhibits “V-1”, “W”, and “X” dated October 24, 1990, and located at the end of this subchapter. The boundaries are described as follows:

The Kaneohe Channel, beginning at a line across the channel at day beacon G”11”, then through each and every buoy and day beacon in ascending order to the intersection at the extended line of the Sampan Channel range marks.]

In addition to speed restrictions found in section 13-244-9, slow-no-wake restrictions shall apply in Kaneohe Bay offshore mooring areas, Kaneohe Bay ocean waters zones D, E, F, and I, Kualoa waters zone B, and anywhere within the Kaneohe Bay when a vessel is within two hundred feet of Kapapa Island and the Central Reef shallows defined as areas having a depth of less than or equal to five feet mean lower low water, including the area of Ahu O Laka Island, (“The Sand Bar”).

[(u)] (p) No increase in the level of commercial ocean use activities [as of July 3, 1990] existing on July 1, 1993 will be permitted within Kaneohe Bay waters.

(q) Activities conducted by a bona-fide educational institution or an organization which is registered with the State and classified by the Internal Revenue Service as a not-for-profit (section 501 (c)(3)) organization shall not be subject to the restrictions of subsection (p), but shall operate only in accordance with a permit issued by the department pursuant to chapter 13-231 or chapter 13-256 or both.

(r) Anchoring or mooring on living coral is prohibited.

(s) All sea walker activity shall be done on a flat sandy bottom, not on sea grass beds.

(t) All underwater activity, including but not limited to SCUBA, snorkeling, and sea-walker, shall prohibit participants from touching coral and/or living parts of a reef.

[Eff 2/24/94; am] (Auth: HRS §§220-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§220-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

69. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new subsection 13-256-73.1 to read as follows:

§13-256-73.1 Kaneohe Bay ocean waters commercial activity use permits. (a) No commercial ocean use activity may be conducted within Kaneohe Bay waters except in accordance with a Kaneohe Bay waters commercial activity use permit issued by the department. For the purpose of this section, “full service permit” means a permit which includes thrill craft, water sledding, and other high speed boating activities in addition to sailing, snorkeling, scuba diving, sail boarding, and other related water recreational activities approved by the department.

(b) Commercial operators possessing a valid Kaneohe Bay Ocean Recreation Management Area use permit on the effective date of these rules shall be authorized a similar permit as described below upon complying with all laws and rules of the department. The number and types of Kaneohe Bay ocean waters commercial activity use permits authorized for Kaneohe Bay ocean waters shall be as follows:

- (1) One full service permit as authorized in section 13-256-72.1;
- (2) Two large full service permits as authorized in section 13-256-73.2;
- (3) One small full service permit as authorized in section 13-256-73.3;
- (4) One small full service permit as authorized in section 13-256-73.4;
- (5) Three large snorkel tour operations, including associated underwater activities approved by the department, as authorized in section 13-256-73.5;
- (6) Three small sail or snorkel tour operations, including associated underwater activities approved by the department, as authorized in section 13-256-73.6; and
- (7) One glass bottom boat tour operation as authorized in section 13-256-73.7.

(c) Any transfer of a large full service permit, except for a transfer to a family member as defined in section 13-256-71, shall revert the large full service permit to a large snorkel tour permit with an aggregate maximum carrying capacity of no more than one-hundred fifty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel. Any change from a large full service permit to a large snorkel tour permit shall be on a one for one

basis reducing the number of large full service permits by one and authorizing an increase to the number of large snorkel tour permits by one.

(d) Any transfer of a small full service permit, except for a transfer to a family member as defined in section 13-256-71, shall revert the small full service permit to a small sail or snorkel tour permit with an aggregate maximum carry capacity of no more than sixty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel. Any change from a small full service permit to a small sail or snorkel tour permit shall be on a one for one basis reducing the number of small full service permits by one and authorizing an increase to the number of small sail or snorkel tour permits by one.

(e) The Kaneohe Bay ocean waters commercial activity use permit required under this section shall satisfy the requirement for all other harbor use permits required of commercial operators under chapter 13-231, with the exception of a mooring permit for each vessel moored in Heeia Kea Harbor or offshore.

(f) The Kaneohe Bay waters commercial activity use permit fee per permit shall be as provided in HRS chapter 200 and rules adopted there under.

(g) The report of gross receipts shall be received by the department for each month covered by the commercial activity use permit no later than the end of the month following the reported month and shall be submitted on a form acceptable to the department. Failure to submit the report of gross receipts as required for a period in excess of sixty days following the due date, may be treated by the department as causing an automatic termination of the Kaneohe Bay waters commercial activity use permit.

(h) The department may conduct a financial audit of the records of a Kaneohe Bay ocean waters commercial use permit to determine the accuracy of reported gross receipts or to inspect any other financial information directly related to the enforcement of these rules after providing notice, as described in section 13-230-6, no less than thirty days prior to the audit.

(i) Any vessel with an authorized carrying capacity of more than six passengers with installed toilet facilities shall be equipped with a United States Coast Guard approved marine sanitation device.

(j) All permittees shall maintain a daily log of the operations, to include vessel and operator identifying information, number of customers serviced, fuel or sewage spills, sewage pumping out, refueling, incidents on the water and time of departure and arrival at the Heeia Kea Small Boat Harbor pier, or authorized passenger loading and unloading area, or appropriate operating zone. All permittees shall submit the logs to the department each week.

(k) There shall be no passenger loading and unloading at a launch ramp at Heeia Kea Small Boat Harbor.

(l) Large full service permits authorized by section 13-256-73.2, shall be allowed to use no more than three trailers per permit per day at the Heeia Kea harbor launch ramps for the launching and recovery of vessels. Small service permits authorized by sections 13-256-73.3 and 13-256-73.4, shall be allowed not more than two trailers per permit per day to use the Heeia Kea harbor launch ramps for the launching and recovery of vessels. Each trailer allowed to use a launch ramp shall be properly licensed and shall be issued a ramp use decal by the department which shall be affixed to the forward end of the trailer tongue.

(m) No activity that is new to a permittee may be conducted without prior written authorization from the department.

(n) Permittees shall establish a safety instruction program for customers that includes, but is not limited to, the use of a personal flotation device, and notification of hazardous conditions or areas and restricted areas.

(o) Permittees shall maintain a visual watch over persons in the water.

(p) Permittees shall have no less than one staff member on site within the permittee's Kaneohe Bay operating area who carries a current adult cardio-pulmonary resuscitation (CPR), and standard first aid and lifeguard training certificates. A list of water safety training certificates acceptable to the department shall be provided to the permittee.

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

70. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.2 to read as follows:

§13-256-73.2 Large full service permit restrictions. (a) Not more than one-hundred fifty customers per day per permit shall be allowed for a large full service permit.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

(1) Two host vessels with an aggregate maximum carrying capacity of one-hundred fifty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel.

(2) Six rental thrill craft and one thrill craft used for operational safety purposes;

- (3) Two equipment barges, for each of which the passenger carrying capacity shall be six or as established by a United States Coast Guard Certificate of Inspection;
- (4) Three motorboats, for each of which the passenger carrying capacity shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and
- (5) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, and small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of each host vessel and service barge having a carrying capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The permittee shall indicate which host vessel is declared to be the primary vessel used to embark and disembark passengers from the pier. This vessel shall be allowed to load to full permit capacity of one-hundred fifty. Should the certified passenger capacity of the primary vessel be less than one-hundred fifty, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The three small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) Host vessels shall be equipped with a United States Coast Guard approved marine sanitation device.

(g) All thrill craft and other vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and must display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) In the event there is a sale or transfer of a majority of ownership interest in the business to a person not an owner or a shareholder of record after the effective date of this section, the number of host vessels allowed per permit shall be reduced to one host vessel, unless the sale or transfer is to a family member.

(j) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

(k) Any transfer or combination of transfers by the owners or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically void the use of thrill craft, high speed towing/water sledding, and water skiing activities and the permit shall revert to a large snorkel tour permit as found in section 13-256-73.5 unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a large snorkel tour.

(l) High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

(m) For the Checker Reef area, host vessel(s) must be moored with bow and stern anchoring as approved by the department, thirty feet or more off of the reef on the south and west edge of Checker Reef, with no obstruction of the use of the channel passing to the southwest of the reef.

(n) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of operation.

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

71. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.3 to read as follows:

§13-256-73.3 Small full service permit restrictions.

(a) Not more than seventy customers per day per permit shall be permitted for a small full service permit.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

- (1) One host vessel with a maximum passenger carrying capacity of seventy passengers;
- (2) Three rental thrill craft and one thrill craft used for operational safety purposes;
- (3) Two equipment barges, the passenger carrying capacity of each shall be six or as established by a United States Coast Guard Certificate of Inspection;
- (4) Two small motor boats, the passenger carrying capacity of each shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and
- (5) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of the host vessel and service barges having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The host vessel shall be allowed to load passengers to the full permit capacity of seventy. Should the certified passenger capacity of the vessel be less than seventy, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The two small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) A United States Coast Guard approved marine sanitation device or portable toilet shall be located on either the host vessels or one of the equipment barges.

(g) All thrill craft and other vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have the discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of seventy customers allowed per day. Not-for-profit tours and passengers shall not be mixed with

commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

(j) Any transfer or combination of transfers by the owner or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically void the use of thrill craft, high speed towing/water sledding, and water skiing activities and the permit shall revert to a small sail/snorkel tour permit as found in section 13- 256-73.6, unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a small sail/snorkel tour.

(k) High speed operations must take place in deep water two hundred feet or more from any reef edge, reef crest, or sand flat.

(l) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of operation.

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

72. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.4 to read as follows:

§13-256-73.4 Small full service permit restrictions without thrill craft, water sledding, and high speed towing activities.

(a) No more than seventy customers per day per permit shall be permitted for a small full service permit without thrill craft, water sledding, and high speed towing activities.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

- (1) One host vessel with a maximum passenger carrying capacity of seventy passengers.
- (2) Two equipment barges, the passenger carrying capacity of each shall be six or as established by a United States Coast Guard Certificate of Inspection.
- (3) Two small motorboats, the passenger carrying capacity of each shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and

- (4) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.
- (c) The passenger carrying capacity of the host vessel and service barges having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.
- (d) The host vessel shall be allowed to load passengers to the full permit capacity of seventy. Should the certified passenger capacity of vessel be less than seventy, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.
- (e) The two small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.
- (f) A United States Coast Guard approved marine sanitation device or portable toilet shall be located on either the host vessel or one of the equipment barges.
- (g) All vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.
- (h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.
- (i) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of seventy customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.
- (j) Any transfer or combination of transfers by the owners or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically cause the permit to revert to a small sail/snorkel tour permit as found in section 13-256-73.6, unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 13-256-7.
- (k) Thrill craft, water sledding, waterskiing and high speed towing are not authorized activities under this permit.

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

73. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.5 to read as follows:

§13-256-73.5 Large snorkel tour permit restrictions.

(a) No more than one-hundred fifty customers per day or the historical daily average of the months July, August, and September of the calendar years 1996 thru 2000, whichever is lower, not to be less than seventy customers per day per permit shall be permitted.

(b) The passenger carrying capacity of the vessel(s) having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(c) All associated operational and supporting activities on land must meet all applicable land use laws and zoning ordinances, including, but not limited to the number of passengers allowed and approved for loading from private lands or as approved by the department through a conservation district use permit.

(d) Snorkel tours shall be conducted in Zones “D” and “E” within Kaneohe bay waters, pursuant to section 13-256-73.

(e) All stops for other than snorkeling shall be within the commercial area of the sand flat area within Kaneohe By waters designated as restricted zone I and shall not exceed two hours. Only non-motorized equipment may be used for water sports recreation.

(f) Any vessel authorized on the effective date of these rules to load passengers from the Heeia Kea Small Boat Harbor pier under a permit issued pursuant to chapter 13-231 is permitted to load to full certified passenger capacity.

(g) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000.

An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on July 1, 1993 by the department shall not be allowed.

(h) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee’s total number of passengers shall not exceed the maximum number of

customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(i) All vessels shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(j) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of a business transfer fee in accordance with section 13-256-7.

(k) When the Kualoa full service permit or a large full service permit turns into a large snorkel tour permit because of a transfer or ownership to a non-family member, no additional motorized or non-motorized vessels or equipment shall be allowed to be added to the existing authorized inventory.

(l) When a large snorkel tour permit transfers ownership to a non-family member no more than seventy customers per day shall be permitted.

[Eff _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

74. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.6 to read as follows:

§ 13-256-73.6 Small sail/snorkel tour permit restrictions.

(a) Not more than sixty customers per day or the historical daily average of the months July, August, and September of the calendar years 1996 thru 2000, whichever is lower, not to be less than thirty five customers per day per permit shall be permitted.

(b) The passenger carrying capacity of the vessel(s) having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(c) Snorkel tours shall be conducted in Zones “D” and “E” within Kaneohe Bay waters, pursuant to section 13-256-73.

(d) All stops for other than snorkeling shall be within the commercial area of the sand flat area within Kaneohe Bay waters designated as restricted zone I and shall not exceed one hour. Only non-motorized equipment may be used for water sports recreation.

(e) Any vessel authorized on the effective date of these rules to load passengers from the Heeia Kea Small Boat Harbor pier under a permit issued pursuant to chapter 13-231 is permitted to load to full certified passenger capacity.

(f) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000.

An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on July 1, 1993, by the department shall not be allowed.

(g) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(h) All vessels shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(i) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of business transfer fee in accordance with section 13-256-7.

(j) When a small full service permit turns into a small snorkel tour permit because of a transfer of ownership to a non-family member, no additional motorized or non-motorized vessels or equipment shall be allowed to be added to the existing authorized inventory.

(k) When a small snorkel tour permit transfers ownership to a non-family member no more than thirty-five customers per day shall be permitted.

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

75. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.7 to read as follows:

§ 13-256-73.7 Glass bottom boat tour permit restrictions.

(a) The passenger carrying capacity of the vessel shall be established by a United States Coast Guard Certificate of Inspection. If a vessel has no U.S.C.G Certificate of Inspection, the vessel's capacity shall not exceed six passengers.

(b) The maximum number of passengers per outing shall be seventy passengers. Passengers may be loaded and unloaded only at the Heeia Kea small boat harbor pier.

(c) The vessel shall be equipped with a United States Coast Guard approved marine sanitation device.

(d) The vessel shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(e) Educational and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of seventy customers allowed per outing. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(f) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000.

An increase greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on the effective date of these rules by the department shall not be allowed.

(g) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of business transfer fee in accordance with section 13-256-7.

(h) An exchange of passengers between the glass bottom boat tour permittee and any other permittee shall not be allowed.

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

76. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.8 to read as follows:

§ 13-256-73.8 Replacement vessels size restrictions.

(a) Replacement vessels shall not be greater in vessel length overall than 10 % of the vessel overall length authorized on May 22, 2000.

(b) Replacement of any existing vessels or equipment shall require prior written approval by the department.

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

77. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.9 to read as follows:

§ 13-256-73.9 Shuttling restrictions.

No shuttling or transferring of customers among the permittees for the purpose of exceeding the maximum daily customer limit specified by type of permit or exceeding the certified passenger capacity of the vessel shuttling or receiving the passengers shall be allowed.”

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

78. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.10 to read as follows:

§ 13-256-73.10 Permit Issuance.

(a) Permittees holding valid permits on the effective date of these rules shall be offered the opportunity to apply for the permit category in which they are operating. If any permit offer is refused by the permittee, that permit shall not be issued and shall be eliminated from the total number of Kaneohe Bay ocean waters commercial activity use permits.

(b) Permit applications shall be reviewed for compliance with chapter 200, HRS, applicable rules, and permit conditions. Failure to comply with any permit condition, or having any record of inaccurate submission of gross receipts, inconsistent or untimely payments of fees and charges, or unsafe operations during the last term of a valid permit held by the applicant, may be cause for rejection of the permit application.

(c) The following documents shall be submitted for review at the time an application is made for the issuance of a permit:

- (1) Vessel documentation or registration.
- (2) Vessel certificate of inspection (if applicable).
- (3) Certificate of business liability insurance which insures all activities of permittee, including coverage for the operation of thrill craft or other activities including, but not limited to, canoeing, sailing, windsurfing, water sledding, snorkeling, scuba diving or other underwater activities, if applicable.
- (4) General excise tax license.
- (5) Copy of current business registration certificate on file with the department of commerce and consumer affairs.
- (6) Tax clearance certificate from the department of taxation.
- (7) Conservation district use permits (if applicable).
- (8) Affidavit describing any and all accidents, or safety related issues or events, including those affecting employees or customers that have occurred within the past year.
- (9) Affidavit describing any and all warnings, discrepancies, citations, fines, penalties and convictions levied by the United State Coast Guard, department of land and natural resources, Honolulu police department, City and County of Honolulu, department of planning and permitting, or any other regulatory agency.
- (10) Affidavit describing any and all sales or transfers of any ownership interest in the business.

(d) The department shall publish a list of Kaneohe Bay waters commercial activity use permits scheduled for issuance to incumbent permit holders thirty days prior to the expiration dates of the preceding permits issued in a newspaper of general circulation in the Kaneohe area, with a copy to the Kaneohe Bay Regional Council, inviting public comment on this list and the incumbent permit holders. Any request that a permit not be issued must be accompanied by factual supporting documentation showing the incumbent permittee's failure to meet permit issuance requirements of this chapter.

(e) Insurance requirements for all commercial vessels and all activities conducted on or in the water of Kaneohe bay shall be not less than \$50, 000 for property damage and not less than \$1,000,000 for liability. The liability insurance shall name the State of Hawaii as an additional insured. Any subcontractor employed by a permittee, such as, but not limited to, a scuba diving instructor, shall have insurance coverage which provides the same coverage as

required of the permittee and names the State of Hawaii as a additional insured. The permittee and its subcontractors shall provide to the Department certificate(s) of insurance that cover any and all activities conducted under the permit.

(f) In the event an application for the issuance of a new permit is denied, the applicant will be afforded the opportunity for a hearing in accordance with section 13-231-31 and section 13-231-32 for the sole purpose of allowing the applicant to contest the basis of the denial. The opportunity of a hearing shall not apply to automatic expiration provisions of these rules.”
[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

79. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.11 to read as follows:

§ 13-256-73.11 Temporary mooring of vessels authorized for commercial use in Kaneohe Bay at Heeia Kea small boat harbor.

Temporary mooring within Heeia Kea small boat harbor for any vessel that is authorized for commercial use in Kaneohe Bay ocean waters shall not exceed a cumulative period of 180 days in the same calendar year. [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39)

80. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.12 to read as follows:

§ 13-256-73.12 Kaneohe Bay ocean waters commercial activity use permit revocation.

Revocation of a Kaneohe Bay waters commercial use permit shall be accomplished in accordance with section 13-231-6.”
[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39)

81. Chapter 13-256-77, Hawaii Administrative Rules, is amended to read as follows:

§ 13-256-77: Kaneohe [commercial high speed boating] recreational thrill craft zone.

(a) The [high speed boating] recreational thrill craft zone is the area encompassed by the boundaries of the zone shown on Exhibit “V”, dated [May 15, 1990] April 16, 2001, and located at the end of this subchapter. The boundaries of Zone K are as follows:

[Beginning at a point in the water at the intersection of the Kaneohe Sampan channel ranges extending seaward with an azimuth measure clockwise from True South of 217 degrees, and the Kaneohe Bay waters boundary, establishing the southeastern boundary of the zone; then in a straight line to a point in the water at the intersection of the Kaneohe ship channel ranges extending seaward with an azimuth measure clockwise from True South of 227 degrees, and the seaward boundary of Kaneohe Bay waters, establishing the northwest boundary of the zone.]

Beginning at a point in the water at approximately 21° 28' 23.5" N / 157° 48' 27" W, that intersects the Kaneohe Sampan channel range extending seaward with an azimuth measured clockwise from True South of 217 degrees, and a straight line drawn to a point in the water at approximately 21° 30' 42" N / 157° 48' 52" W, that intersects Kaneohe ship channel range extending seaward with an azimuth measured clockwise from True South of 227 degrees, establishing the southwestern boundary of the zone. The northwestern boundary of the zone is the straight line that is an extension seaward of the Kaneohe ship channel range with an azimuth measured clockwise from True South of 227 degrees to the limit of the territorial sea. The southeastern boundary of this zone is the straight line that is an extension seaward of the Kaneohe Sampan channel range with an azimuth measured clockwise from True South of 217 degree to the limit of the territorial sea.

As an aid in locating the southwestern boundary, it exists between the Kaneohe Sampan channel and Kaneohe Ship channel ranges along a straight line which can be seen by sighting a straight line between Pyramid Rock which is located at approximately 21° 27' 42" N / 157° 45' 48" W, and Kaoio Point which is located at approximately 21° 32' 03" N / 157° 50' 16" W.

This zone is designated as a [commercial high speed boating] recreational thrill craft zone. Other vessels shall exercise caution when transiting this area. [No more than four commercial operating area use permits for high speed boating shall be issued for this zone. This zone shall be closed to commercial high speed boating annually, during the whale season, from December 15 to May 15 of the following year.] [Eff 2/24/94] (Auth: HRS §§200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§ 200-22, 200-23, 200-24, 200-37, 200-39)

81. Material, except source notes, to be repealed is bracketed. New material is underscored.

82. Additions to update source notes to reflect these amendments are not underscored.

83. These amendments to Parts I, II, and III Division of Boating and Ocean Recreation, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of The Lieutenant Governor.

Laura H. Thielen, Chairperson

Department of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General